WSR 24-13-074
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed June 17, 2024, 6:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-104.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests. The department of agriculture (department) is proposing expanding the boundaries of the Japanese beetle internal quarantine.

The department is also proposing to amend the rule chapter to:

- Add soil samples to the list of regulated articles in WAC 16-470-710(2), as well as conditions governing the movement of soil samples.
- Clarify, in WAC 16-470-710(7), that cut flowers exposed to open air environments during their harvest, transportation, or trade are included as a regulated article.
- Add conditions governing the movement of cut flowers for decorative purposes.
- The rule amendment would require businesses that are located within the internal quarantine area and are selling regulated articles under WAC 16-470-710 (4) or (7) to post signage to alert customers purchasing regulated articles that they may not be transported outside of the quarantine area.

Hearing Location(s): On August 6, 2024, at 2:00 p.m., via Microsoft Teams conference call. Join on your computer, mobile app, or room device https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzY0ZGJmNDMtNmFkNS00YzE3LTk1ODUtMDhhMzhmM2I0YWZm%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 227 355 433 524, Passcode MxYsLN; or dial in by phone +1 564-999-2000,,810804665# United States, Olympia, Phone conference ID 810 804 665#.

Date of Intended Adoption: August 13, 2024.

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., August 6, 2024.

Assistance for Persons with Disabilities: Contact Autumn Dryden, phone 360-902-2061, email Autumn.Dryden@agr.wa.gov, by 5:00 p.m., July 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current permanent internal quarantine specified in chapter 16-470 WAC covers 49 square miles in the southeastern corner of Yakima County and the southwestern corner of Benton County. Japanese beetle catches from the 2022 and 2023 trapping seasons indicate that a permanent expansion of the internal quarantine is necessary to prevent further infestation of this pest in nonquarantined areas.

Topsoil containing vegetative material has already been identified as a potential pathway in which Japanese beetle could spread and is currently regulated under the quarantine. Soil samples pose a similar risk and have been identified as another way the beetle could

spread. Adding soil samples to the regulated articles list will help prevent further spread of this pest.

Cut flowers are already a regulated article under the quarantine. The proposed amendments clarify that cut flowers exposed to open air environments during their harvest, transportation, or trade are regulated.

Requiring businesses to post signage located within the internal quarantine area and where selling regulated articles under WAC 16-470-710 (4) or (7) will alert customers purchasing plants to keep them within the quarantine area.

Reasons Supporting Proposal: Japanese beetle (*Popillia japonica* Newman) is a highly invasive plant pest native to Japan. It has been known to cause severe damage to more than 300 species of ornamental and agricultural plants, including roses, grapes, and hops. Adult beetles damage plants by skeletonizing foliage and feeding on buds, flowers, and fruit. The larvae also damage the roots of plants such as turf grass. Although this feeding does not always kill the plant, it weakens it and may reduce the plant's overall yield.

In 2021, the department caught 24,048 Japanese beetles in the current internal quarantine area. Throughout 2021, 2022, and 2023, the department took extensive measures to reduce the spread of the beetle, with an ultimate goal of eradicating it. Measures that have been taken include treating residential and public properties with pesticide, trapping, and establishing an internal quarantine. Despite these efforts, by the end of the 2022 trapping season, numerous Japanese beetles, which indicate a reproducing population, were caught outside of the currently established internal quarantine area. This occurred again in 2023, with beetles being caught even further outside of the internal quarantine area than in 2022. Due to this, immediate action is needed to expand the internal Japanese beetle quarantine to reflect the area of infestation more accurately and strengthen the quarantine's protections. Further, the department believes that adding soil samples as a regulated article, requiring signage be posted for businesses selling certain regulated articles, and clarifying the requirement around cut flowers is necessary to prevent the beetles' further dissemination within this state and to protect the state's forest, agricultural, horticultural, floricultural, beekeeping, and environmental interests.

If Japanese beetle becomes permanently established throughout the state, it could severely threaten several of Washington's agricultural industries. The threat this pest poses is particularly concerning due to the area in which the detections have occurred. There are a number of farms and nurseries in close proximity to the detection sites growing plant species known to be targeted by Japanese beetle. Not only do these beetles pose a threat to the plants themselves, but if established they have the potential to impact the availability of export markets for agricultural commodities grown in the area. Expanding the Japanese beetle internal quarantine and other proposed quarantine amendments will help prevent the spread of this invasive pest and protect Washington's agricultural industries, as well as maintain access to national and international markets.

Statutory Authority for Adoption: RCW 17.24.011 and 17.24.041.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sven Spichiger, 7321 Linderson Way S.W., Suite 102, Tumwater, WA 98501, 360-280-6327.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department is not a listed agency under RCW 34.05.328 (5)(a)(i).

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

Chapter 16-470 WAC

Quarantine—Agricultural Pests

Japanese Beetle Quarantine

June 18, 2024

SECTION 1: **Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

Overview and Background: The department is proposing to amend and expand the Japanese beetle quarantine to include additional portions of Yakima and Benton counties. Japanese beetles have been found in these extended areas surrounding the original quarantine area. In a continued effort to stop the spread of the beetles, the department seeks to expand the current internal quarantine specified in chapter 16-470 WAC in nearly every direction to include areas where Japanese beetles have been detected. Soil samples will be added to the list of regulated articles, and a clarification will be made that cut flowers exposed to open air environments are a regulated article.

Businesses located within the quarantine area selling regulated articles, as defined in WAC 16-470-710, must post signage which is clearly visible at all business entrances, as well as points of sale and aisles where regulated articles are being sold. Businesses must use signage developed by the department, which clearly states that regulated articles purchased cannot be transported outside of the quarantine area. The required signage may be found on the department's website (http://agr.wa.gov/beetles) and must be, at minimum, 8.5" x 11".

Japanese beetle (*Popillia japonica* Newman) is a highly invasive plant pest native to Japan. It has been known to cause severe damage to more than 300 species of ornamental and agricultural plants, including roses, grapes, and hops. Adult beetles damage plants by skeletonizing foliage and feeding on buds, flowers, and fruit. The larva also damage the roots of plants such as turf grass. Although this feeding does not always kill the plant, it weakens it and may reduce the plant's overall yield.

Since June 2021, the department has collected thousands of Japanese beetles in traps around the city of Grandview in Yakima County. Each year, the department conducted extensive eradication work and placed thousands of traps in and around the affected areas to monitor the infestation. Many beetles have been collected from traps in nearby Benton County indicating an established population and a general spread of the infestation. The beetle's presence poses a serious

threat to gardens, parks, and farms by destroying vegetation. If Japanese beetle becomes permanently established throughout the state, it could threaten many of Washington's agricultural industries. The threat this pest poses is particularly concerning due to the area in which the detections have occurred. There are dozens of farms and nurseries near detection sites growing plants targeted by Japanese beetle.

Not only do these beetles pose a threat to the plants themselves, but if established, they have the potential to impact export markets for agricultural commodities grown in the area. Expanding the Japanese beetle quarantine to include additional portions of Yakima and Benton counties, will help prevent the spread of this invasive pest and protect Washington's agricultural industries, as well as maintain access to national and international markets.

Proposed Rule Amendments: The proposed rule amendments would expand the existing internal quarantine boundary for Japanese beetle in the southeastern corner of Yakima County and the southwestern corner of Benton County, including the city of Sunnyside and portions of the cities of Outlook and North Prosser.

Regulated Articles: The existing rule restricts the movement of regulated articles from within the quarantine area to outside the quarantine area. The following are proposed amendments to regulated articles in both the current and expanded quarantine areas:

- Add soil samples to the list of regulated articles in WAC 16-470-710(2);
- Clarify, in WAC 16-470-710(7), that cut flowers exposed to open air environments during their harvest, transportation, or trade are a regulated article.

Business Signage: As proposed in WAC 16-470-710, businesses are now required to post signage near entrance(s) clearly stating that regulated articles purchased cannot be transported outside of the quarantine area.

Businesses in the expanded quarantine area will have to comply with the conditions governing the movement of regulated articles in order to transport articles to areas outside the quarantined area. These conditions (treatment options) include:

1. *The upper eight inches of topsoil containing vegetative material from all properties, humus and compost (except when produced commercially), and growing media (except when commercially packaged):*

a. Steam-heated to a temperature of 140°F for one hour to kill all life stages of Japanese beetle.

b. Other treatments determined to be effective at eradicating Japanese beetle and approved in writing by the director.

2. *Yard debris:*

a. Steam-heated to a temperature of 140°F for one hour to kill all life stages of Japanese beetle.

b. When consisting solely of woody materials containing no soil, yard debris may be chipped to a screen size of one inch in two dimensions or smaller during the Japanese beetle adult flight season.

i. Woody material containing no soil can be moved outside of the Japanese beetle adult flight season without chipping.

c. Another treatment determined to be effective at eradicating Japanese beetle and approved in writing by the director.

3. *Plants for planting and propagation except when dormant, bareroot, and free from soil or growing media: All plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turf-*

grass (sod): Each shipment must comply with the treatment or inspection requirements detailed under WAC 16-470-717 (3)(a) - (f). Before the shipment moves outside the quarantined area, the shipment must be approved by the department. Approval will be documented by the issuance of a certificate of treatment or inspection when the department verifies that the shipment is in compliance with the treatment or inspection requirements. The certificate must accompany the shipment while the shipment is in transit. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped dormant and bareroot with no soil or growing media attached are exempt from these requirements and should be identified as bareroot on shipping documents. WAC 16-470-717 (3)(a) - (f) requirements include:

a. Production in an approved Japanese beetle-free greenhouse/screenhouse.

b. Production during a pest-free window.

c. Application of approved regulatory treatments.

d. Dip treatment - not an approved treatment.

e. Drench treatments for container plants only. Not approved for ornamental grasses or sedges.

f. Media (granule) incorporation for container plants only. Not approved for ornamental grasses or sedges.

4. *Hop bines and unshucked corn ears:*

a. Fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by the department and found free of Japanese beetle for the entire adult flight period (May 15 through October 15), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by the department, unshucked corn ears may be moved outside the quarantined area.

b. If the department determines there is evidence of Japanese beetle presence, bines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance.

c. All shipments of hop bines and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

5. *Soil samples (proposed):*

a. Soil samples may be transported to a laboratory for testing outside of the quarantine area if they are securely double bagged and clearly labeled with the following statement: "This soil sample originates from a Japanese beetle quarantine area. Sample must either be securely double bagged prior to disposal or incinerated."

b. Laboratories located within Washington state that are receiving soil samples originating from the quarantine area must either securely double bag the samples prior to disposal or incinerate the samples.

Required Professional Services: The proposed rule amendment would not require professional services. A business may choose to hire professional services to assist in applying a Japanese beetle treatment or taking soil samples; however, it would not be mandatory.

SECTION 2: **Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	1% of Average Annual Payroll*	0.3% of Average Annual Revenue**	Minor Cost Threshold ***
111150	Corn Farming	$2,759.57	$2,435.67	$2,759.57
111219	Other Vegetable (except Potato) and Melon Farming	$3,503.04	$12,815.87	$12,815.87
111331	Apple Orchards	$9,820.23	$4,178.42	$9,820.23
111332	Grape Vineyards	$5,461.08	$479.56	$5,461.08
111334	Berry (except Strawberry) Farming	$3,422.69	$10,768.61	$10,768.61
111335	Tree Nut Farming	Redacted	$650.33	$650.33
111339	Other Non-Citrus Fruit Farming	$2,941.04	$755.89	$2,941.04
111421	Nursery and Tree Production	$5,322.57	$2,712.36	$5,322.57
111422	Floriculture Production	$7,268.96	$718.29	$7,268.96
111940	Hay Farming	$1,384.56	$4,522.70	$4,522.70
111998	All Other Miscellaneous Crop Farming (Hops Farming)	$11,775.64	$2,882.31	$11,775.64
236118	Residential Remodelers	$1,448.44	$1,079.77	$1,448.44
444220	Nursery; Garden Center and Farm Supply Stores	$4,675.20	$3,612.25	$4,675.20
541320	Landscape Architectural Services	$4,874.25	$987.60	$4,874.25
561730	Landscape Services	$2,131.66	$905.21	$2,131.66
562111	Solid Waste Collection	$14,106.51	$22,689.65	$22,869.55

* Data source: 2022 Dataset pulled from USBLS, and ESD
** Data source: 2022 Dataset pulled from DOR
*** The Minor Cost Threshold is the larger amount between 1% average annual payroll and 0.3% average annual revenue

SECTION 3: **Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services, and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The industries impacted by the proposed rule vary greatly due to the large amount of host material targeted by Japanese beetle and the widespread availability of it within the proposed quarantine area. Likewise, the possible impact to businesses varies depending on the number of regulated articles a business handles and if those articles are moved outside of the proposed quarantine area. Some businesses may handle only one regulated article, whereas others handle multiple. The time of year a business moves regulated articles, whether during adult flight season or not, may also impact potential costs. Additionally, proposed regulated articles may be a product that is created and sold (which may impact revenue), or a waste by-product of a business operation (which the business needs to dispose of).

Businesses located within the quarantine area selling regulated articles, as defined in WAC 16-470-710, must post signage which is clearly visible at all business entrances, as well as points of sale and aisles where regulated articles are being sold. Businesses must use signage developed by the department which clearly states that regulated articles purchased cannot be transported outside of the quarantine area. The required signage may be found on the department's website (http://agr.wa.gov/beetles) and must be, at minimum, 8.5" x 11" in size. Businesses will initially be provided with signage from the department to be used. Should the provided signage become damaged, illegible, or discarded, businesses will be able to access and print department-approved signage to maintain compliance with WAC

16-470-710(4). Thus, should a business need to replace any of its signage, they will likely experience an added cost of compliance to account for the following, if not already on hand:

1. Internet access through an internet service provider;

2. A personal computer (PC) with minimum technical specifications allowing for access to the internet;

3. Printer with minimum technical specifications to produce approved department signage found at http://agr.wa.gov/beetles; and

4. Standard 8.5" x 11" printer paper, also referred to as "multipurpose copy paper."

Businesses impacted by the proposed rule amendments are likely to experience a loss in sales or revenue if they sell any of the regulated articles and are unable to transport them outside of the proposed quarantine area. In order to transport these items, businesses will need to utilize one or more of the treatment options provided in the current rule (discussed under Section 1). Depending on which treatment is used, businesses may see an increase in costs related to equipment, supplies, labor, and administration. To analyze these potential cost impacts, this section has been broken into two parts. One analyzes the potential loss in revenue and the other analyzes additional costs associated with the implementation of treatment options.

The department estimates there are around 50 businesses in the proposed quarantine area that could potentially be affected by the proposed rule amendments. However, it is not clear how many of these businesses would actually be impacted, as not enough information was available to make a determination. Below is a breakdown of the businesses by industry type and a list of the proposed regulated articles the businesses could be affected by if transport restrictions were in place.

Soil Samples: Businesses in both the original and expanded quarantine areas will need to attach labels to any soil samples shipped to laboratories outside of the quarantine. The department will supply labels at no cost to businesses and third-party companies that take soil samples. However, there may be a small amount of additional labor costs related to physically applying the labels to the samples, which will vary based on the number of samples a business takes per year.

The department contacted three laboratories that accept soil samples in Washington state that are located outside of the quarantine area, and each business reported that the proposed rule change that will require attaching disposal instructions to soil samples will not lead to additional costs or price increases on their end.

Treatment Options - Requirements and Estimated Costs:

1. The upper eight inches of topsoil containing vegetative material from all properties, humus and compost (except when produced commercially), and growing media (except when commercially packaged):

a. *Steam-heated to a temperature of 140˚F for one hour to kill all life stages of Japanese beetle:* Topsoil containing vegetative material may be securely covered with a tarp or plastic sheeting and steamed to kill any Japanese beetle contained within. Equipment needed for this treatment would include a steam generator, fuel to run the generator, reinforced rubber hoses for transporting the steam, and tarps or plastic coverings. Estimated set-up costs for the steam generator and tarps would be around $46,000. Fueling costs for a diesel steam generator would be around $22.50 per hour (using five gallons per hour at $4.50 per gallon) and the cost for staff to run the system would be around $19.68 per hour (assuming the employee is paid minimum wage and includes costs associated with employer taxes). Additional

costs will include a compliance agreement with the department and inspection costs. A compliance agreement costs $58 per year for licensed nurseries and $72.50 per year for all other businesses. Estimated costs for an inspection in the Grandview area are as follows:

- Eighty-eight miles round trip (from the department office in Pasco or Yakima to Grandview) at $0.67 per mile equaling $58.96.
- One and a half hours travel time at $72.50 per hour ($58 per hour for licensed nursery) equaling $108.75 or $87, respectively.
- Half hour minimum inspection cost at $72.50 per hour ($58 per hour for licensed nurseries) equaling $36.25 or $29, respectively.

Total estimated costs (calculated for nonlicensed nursery) to set up and run this treatment option for two hours would be $46,355.60. After the initial set-up costs, the ongoing costs for a business to continue utilizing this treatment method would be $40.23 per hour.

Since 2022, the department has worked with the City of Grandview to maintain an area within the quarantine area where regulated yard debris can be taken at no cost to businesses. This site is free for residents and businesses located within the quarantine area, with proof of address (such as a utility bill). The site is open Monday - Friday from 8:00 a.m. to 5:00 p.m. There will not likely be increased transportation costs associated with this, as the typical disposal facility is located outside of the quarantine area and further away. Some businesses stated they might see a decrease in transport costs due to this. The department's ability to continue to provide this drop-off site is dependent on funding.

2. **Yard debris:**

a. *Option 1 - Steam-heated to a temperature of 140°F for one hour to kill all life stages of Japanese beetle:* The yard debris must first be chipped in a woodchipper to aid in the distribution of steam. It would then be loaded into a covered container, such as a roll-off container. A tarp may be used over the pile in addition to the container's covering to aid in the steaming process. The material would be steamed to a temperature of at least 140°F for one hour. Additional costs will include a compliance agreement with the department and inspection costs. A compliance agreement costs $58 per year for licensed nurseries and $72.50 per year for all other businesses. Estimated costs for an inspection in the Grandview area are as follows:

- Eighty-eight miles round trip (from the department office in Pasco or Yakima to Grandview) at $0.67 per mile equaling $58.96.
- One and a half hours travel time at $72.50 per hour ($58 per hour for licensed nursery) equaling $108.75 or $87, respectively.
- Half hour minimum inspection cost at $72.50 per hour ($58 per hour for licensed nurseries) equaling $36.25 or $29, respectively.

The total estimated cost (calculated for nonlicensed nursery) for this treatment option to set up and run for two hours (allowing one hour for container to reach temperature) would be around $67,655.60. If a business were to set up their own system, the estimated cost would be as follows:

Equipment/Resources	Details	Cost Occurrence	Estimated Cost
Wood chipper	To chip yard debris prior to treatment	One time cost	~$14,500 (depends on size needed)
Steam generator	Sioux SF-20	One time cost	$45,000

Equipment/Resources	Details	Cost Occurrence	Estimated Cost
Fuel - diesel	$4.50 per gallon using 5 gallons per hour	Once per week	$22.50 per hour
Roll-off container	Vessel for steaming	One time cost	~$6,800
Tarp	Cover yard debris	One time cost	$1,000
Labor (assuming minimum wage employee and includes benefits and taxes)	Staff to run steamer	Once per week	$19.27 - $19.68 per hour

After the initial set-up costs, the ongoing costs for a business to continue utilizing this treatment method would be $40.23/hour.

b. *Option 2 - Chipping of woody material containing no soil:* Yard debris consisting of woody material that contains no soil can be moved outside of adult Japanese beetle flight season without any treatments. During May 15 through October 15, this material must first be chipped to a size of one inch in two dimensions or smaller, prior to being moved outside of the proposed quarantine area. Estimated costs associated with this option would include the cost of a chipper (~$14,500), fuel (using three gallons per hour at a cost of $4.50 per gallon), and labor to run the chipper ($19.68 per hour). Additional costs will include a compliance agreement with the department and inspection costs. A compliance agreement costs $58 per year for licensed nurseries and $72.50 per year for all other businesses. Estimated costs for an inspection in the Grandview area are as follows:

- Eighty-eight miles round trip (from the department office in Pasco or Yakima to Grandview) at $0.67 per mile equaling $58.96.
- One and a half hours travel time at $72.50 per hour ($58 per hour for licensed nursery) equaling $108.75 or $87, respectively.
- Half hour minimum inspection cost at $72.50 per hour ($58 per hour for licensed nurseries) equaling $36.25 or $29, respectively.

The total estimated cost to purchase a chipper and run it for one hour, along with the annual compliance agreement and inspection costs, would be around $14,807.15. After the initial set-up costs, the ongoing costs for a business to continue utilizing this treatment method would be $32.01/hour.

In 2022, the department worked with the City of Grandview to set up an area within the quarantine area where regulated yard debris could be taken at no cost to businesses. This site is free for residents and businesses located within the quarantine area, with proof of address (such as a utility bill). The site is open Monday - Friday from 8:00 a.m. to 3:00 p.m. There will not likely be increased transportation costs associated with this, as the typical disposal facility is located outside of the quarantine area and further away. Some businesses stated they might see a decrease in transport costs due to this. The department's ability to continue providing this drop off site is dependent on funding.

3. Plants for planting and propagation except when dormant and bareroot and free from soil or growing media: All plants with roots, plant crowns or roots, bulbs, corms, tubers, and rhizomes, and turfgrass (sod):

These regulated articles (except for turfgrass/sod) are exempt from quarantine restrictions if shipped dormant and bareroot without soil or growing media attached to the roots. Dormant and bareroot plants do not require further treatment.

A certificate of treatment or inspection will be issued for shipments in compliance. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped bareroot with no soil or growing media attached should be identified as bareroot on shipping documents. Shipments from the proposed quarantine area, into the pest-free areas of Washington, must meet **one** of the following certification options. Dip treatment is not an approved treatment option.

a. Option 1 - Production in an approved Japanese beetle-free greenhouse/screenhouse. All the following criteria apply to be approved as a Japanese beetle-free greenhouse/screenhouse. All media must be sterilized and free of soil. All planting stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period (May 15 - October 15). During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot enter. Such security measures must be approved by the department. No Japanese beetle-contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by the department for presence of all life stages of Japanese beetle and must be specifically approved as a secure area. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed, and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the department as having maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse and were grown in sterile, soilless media."

Some businesses may already have a greenhouse/screenhouse but need to secure it against Japanese beetle. Costs for purchasing anti-insect netting to secure a greenhouse/screenhouse is around $231 for 7.1ft x 150ft. For those businesses that do not already have a greenhouse/screenhouse and choose to purchase one, it would cost around $40,000 depending on the size and type. It is unlikely that businesses would choose to purchase a new greenhouse/screenhouse, as there are other options available with a substantially lower cost.

Costs to businesses associated with this treatment option would include a compliance agreement fee of $58 per year for licensed nurseries and $72.50 for all other businesses, inspection costs, and certification issuance costs. It is assumed that all businesses utilizing this treatment will be a licensed nursery. This is because any business with over $100 of sales which grows or handles plants must be licensed. Estimated costs for an inspection in the Grandview area and certification would be the following:

- Eighty-eight miles round trip (from the department office in Pasco or Yakima to Grandview) at $0.67 per mile equaling $58.96.
- One and a half hours travel time at $58 per hour equaling $87.
- Half hour minimum inspection cost at $58 per hour equaling $29.
- Certificate charge - $20 per phytosanitary certificate.

Total estimated costs for inspection and certification of a licensed nursery would be $193.64 per inspection. The total estimated cost to a business that already has a greenhouse/screenhouse would be $251.64 for one inspection plus the cost of an annual compliance

agreement. With the additional cost of purchasing anti-insect netting, the total cost would be around $482.64. For a business that chose to purchase a greenhouse/screenhouse, an estimated $40,000 would be added to bring the total to $40,251.64 (cost of anti-insect netting not included). As previously stated, it is unlikely that a business would choose to purchase a new greenhouse when other lower cost options are available. Businesses will likely need more than one inspection annually, but the exact number will vary based on business practices.

b. *Option 2 - Production during a pest-free window. The entire rooted plant production cycle (planting, growth, harvest, and shipping) will be completed within a pest-free window (October 16 - May 14), in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, which is May 15 - October 15. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season and were grown in sterile, soilless media."*

Costs to businesses associated with this treatment option would include a compliance agreement fee of $58 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $193.64 (see Option 1 for breakdown of costs). The total estimated costs a business might pay under this treatment option would be $251.64 for one inspection plus the cost of an annual compliance agreement. Businesses will likely need more than one inspection annually, but the exact number will vary based on business practices.

c. *Option 3 - Application of approved regulatory treatments. All treatments will be performed under direct supervision of the department, or under a compliance agreement. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must accompany the shipment. Note that not all treatments or methods approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for use within Washington state. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control Popillia japonica according to the criteria for shipment to Category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Washington State's Japanese beetle quarantine."*

Costs under this treatment option would be associated with developing a standard operating procedure for application of treatments, purchasing of pesticide spray, application equipment, labor, department inspection and certification costs, and a compliance agreement. Developing a standard operating procedure for application of treatments would be a one-time cost to create a manual for treatments applied for Japanese beetle. Estimated costs to develop this would be around $787.20 for one full time employee working 40 hours at $19.68 per hour. The average estimated cost associated with a pesticide spray, application equipment, labor, and fuel would be around $147.50 per acre.

Additional costs would include a compliance agreement fee of $58 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $193.64 (see Option 1 for breakdown of costs). For a five-acre operation, the total estimated cost a business might pay under this treatment option would be $1,776.34.

d. *Option 4 - Drench treatments - container plants only. Not approved for ornamental grasses or sedges. Not approved for field potted plants. Potting media used must be sterile and soilless, containers*

must be clean. Only containerized nursery stock with root balls 12 inches in diameter or smaller and free from field soil are eligible. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated with an approved insecticide. Chemicals approved for drench treatments of container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state and must be labeled for use in Washington state.

Costs under this treatment option would be associated with developing a standard operating procedure for application of treatments, purchasing of drench treatment, application equipment, labor, department inspection and certification costs, and a compliance agreement. Developing a standard operating procedure for application of treatments would be a one-time cost to create a manual for treatments applied for Japanese beetle. Estimated costs to develop this would be around $787.20 for one full time employee working 40 hours at $19.68 per hour. The average estimated cost to purchase drench treatment insecticide would be around $60.00 for 128 ounces. It's unclear how many ounces a business will require for treatment. Typically, businesses will already have the necessary equipment to apply the treatment. Assuming it takes a business eight hours of labor to apply the treatment, the total estimated cost associated with drench treatment would be around $217.44 per 128 ounces of insecticide treatment used.

Additional costs would include a compliance agreement fee of $58 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $193.64 (see Option 1 for breakdown of costs). Total costs for setting up and applying treatment would be around $1,256.28. Ongoing costs after set up would be around $79.68 per hour plus $193.64 weekly/monthly for inspection.

e. *Option 5 - Media (granule) incorporation - container plants only. Not approved for ornamental grasses or sedges. Only containerized nursery stock with rootballs 12 inches in diameter or smaller, planted in approved growing media, and free from field soil are eligible. Plants grown in field soil and then potted into soilless container substrates are not eligible for certification using this protocol, unless all field soil is removed from the roots so plants are bare root at the time of potting. All pesticides used for media incorporation must be mixed thoroughly into the media before potting and plants should be watered at least two times following media incorporation before shipment can begin. Approved growing media used must be free from soil and consist of synthetic or other substances (other than soil) used singly or in combinations. Examples of approved growing media include conifer bark, hardwood bark, expanded or baked clay pellets, expanded polystyrene beads, floral foam, ground coconut husk, ground cocoa pods, ground coffee hulls, ground rice husk, peat, perlite, pumice, recycled paper, rock wool, sawdust, sphagnum, styrofoam, synthetic sponge, vermiculite, and volcanic ash or cinder. The media shall contain only substances that were not used previously for growing plants or other agricultural purposes. It must be free of plant pests, sand, and related matter, and safeguarded in such a manner as to prevent the introduction of all life stages of Japanese beetle to the media. The granules must be incorporated into the media before potting. Plants being stepped up into treated potting media must first have undergone an approved drench treatment to eliminate any untreated volume of potting medium. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have*

been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granular incorporated mix or retreated using one of the approved drench treatments. Chemicals approved for media (granule) incorporation for container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

Costs under this treatment option would be associated with developing a standard operating procedure for media incorporation, purchasing of media (granule), application equipment, labor, department inspection and certification costs, and a compliance agreement. Developing a standard operating procedure for media incorporation would be a one-time cost to create a manual for treatments applied for Japanese beetle. Estimated costs to develop this would be around $787.20 for one full-time employee working 40 hours at $19.68 per hour. Other costs would include those associated with purchasing the media product itself. This would be around $40 for a 25-pound bag. There would not be additional costs for application equipment, labor, or fuel, as the media would be put into a hopper that will automatically apply it at the required rate as the business mixes their potting media. Businesses will already have this equipment. Costs for purchasing soilless growing media would be around $25 for a 10 lb bag. Businesses are currently required to use soilless growing media. Under the proposed rule amendment, a business would only need to purchase soilless growing media if the plants were exposed to a second flight season of Japanese beetle.

Additional costs would include a compliance agreement fee of $58 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $193.64 (see Option 1 for breakdown of costs). Total costs for setting up and applying this treatment option would be around $1,158.84 (estimate for 75 pounds of media). Ongoing costs after set up would be around $40 (25-lb bag) plus weekly/monthly inspection costs.

4. Hop bines and unshucked corn ears:

a. *Option 1 - Hop bines and unshucked corn ears: fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by the department and found free of Japanese beetle for the entire adult flight period (May 15 - October 15), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by the department, unshucked corn ears may be moved outside the quarantined area. If evidence of the presence of Japanese beetle is present during trapping, the business must follow Option 2 to ship out of the quarantine area.*

All businesses transporting hop bines outside of the proposed quarantine area must enter into a compliance agreement with the department. This will cost a business $72.50 per year, plus inspection costs. Estimated costs for an inspection in the Grandview area would be the following:

- Eighty-eight miles round trip (from the department office in Pasco or Yakima to Grandview) at $0.67 per mile equaling $58.96.
- One and a half hours travel time at $72.50 per hour equaling $108.75.
- Half hour minimum inspection cost at $72.50 per hour equaling $36.25.

Total estimated costs for an inspection would be $202.64. Overall total costs for a compliance agreement and inspection would be $275.14. There are no anticipated costs to businesses associated with trapping. The department will conduct all surveying for Japanese beetle and assumes its costs.

b. *Option 2: If the department determines there is evidence of Japanese beetle presence, bines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance. All shipments of hop bines and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by the department with the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.*

5. Cut flowers for decorative purposes, including those exposed to open air environments during their harvest, transportation, or trade:

a. Option 1 - Production in an approved Japanese beetle-free greenhouse/screenhouse. All the following criteria apply to be approved as a Japanese beetle-free greenhouse/screenhouse. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period (May 15 - October 15). During the adult flight period, the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot enter. Such security measures must be approved by the department. No Japanese beetle contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by the department for presence of all life stages of Japanese beetle and must be specifically approved as a secure area. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed, and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved, and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the department as having maintained the above criteria.

All businesses transporting shipments of cut flowers grown in the quarantined area to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination address. This will cost a business $72.50 per year, plus inspection costs. Estimated costs for an inspection would be the following:

- Eighty-eight miles round trip (from the department office in Pasco or Yakima to Grandview) at $0.67 per mile equaling $58.96.
- One and a half hours travel time at $72.50 per hour equaling $108.75.
- Half hour minimum inspection cost at $72.50 per hour equaling $36.25.

Total estimated costs for an inspection would be $202.64. Overall total costs for a compliance agreement and inspection would be $275.14. There are no anticipated costs to businesses associated with trapping. The department will conduct all surveying for Japanese beetle and assumes its costs.

b. *Option 2: If the department determines there is evidence of Japanese beetle presence, cut flowers for decorative purposes must be treated with an insecticide labeled to control adult Japanese beetles prior to movement by a method approved by the director in advance. All*

shipments of cut flowers for decorative purposes to areas outside the quarantined area must be accompanied by a compliance document issued by the department with the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment. Further, in order to remain in compliance with this option, growers must also personally inspect their cut flowers plant stock and remove any adult Japanese beetles if present.

If Japanese beetle is detected, the business must enter into a compliance agreement with the department. This will cost a business $72.50 per year, plus inspection costs. Estimated costs for an inspection in the Grandview area and certification would be the following:

- Eighty-eight miles round trip (from the department office in Pasco or Yakima to Grandview) at $0.67 per mile equaling $58.96.
- One and a half hours travel time at $72.50 per hour equaling $108.75.
- Half hour minimum inspection cost at $72.50 per hour equaling $36.25.

Total estimated costs for an inspection would be $202.64. Other costs to businesses under this treatment option would be associated with purchasing pesticide treatment for Japanese beetle and labor costs associated with spraying fields. Average estimated costs associated with a pesticide spray, application equipment, labor, and fuel would be around $147.50 per acre. Therefore, estimated costs for treating a 100-acre field at $147.50 per acre would be around $14,750. With the compliance agreement, inspection, and certification costs, this would be an annual cost of around $15,025.14.

In addition to costs associated with treatment, some businesses may be required to cover vehicles prior to leaving the proposed quarantine area. This is only if Japanese beetle is detected in shipments from that field. Covering a vehicle may require some businesses to purchase and apply different types of covering products. One of these products could be a tarp, but this is not the only option. Costs associated with purchasing a tarp would be around $500 per truck, with the cost for labor to apply the tarp around $19.68. Total costs associated with covering vehicles would be an estimated $519.68 per truck. This could bring the total estimated annual cost for a 100-acre field to $15,544.82. Multiple tarps may be necessary depending on the number of trucks operated by a business. Tarps can be reused throughout their useful life, which will vary depending on the quality of tarp and how often it will be used.

Overview of Estimated Costs for Treatment Options: Table 3.3 shows a breakdown of all treatment options by regulated article groups and their estimated costs. Businesses may need to implement one or more of the treatment options if they want to move regulated articles out of the proposed quarantine area. There is insufficient data to determine exact costs businesses may incur as a result of the proposed rule amendments. This is because regulated articles will differ between businesses and treatment options used will vary.

Table 3.3 Treatment Options by Regulated Article Groups

Regulated Item	Treatment Option	Details	Cost Occurrence	Estimated Cost Totals
Soil*	Option 1	Steam generator, fuel, tarp, and labor. **No anticipated costs to businesses.** Department provided service.	One time set-up cost. Monthly ongoing cost for running system.	Total: $46,355.60; Ongoing cost: $40.23/hour **Or no cost to business if soil is dropped off at drop site**.
Yard debris	Option 1	Steam generator, fuel, tarp, container, and labor. **No anticipated costs to businesses.** Department provided service.	One time set-up cost. Monthly ongoing cost for running system.	Total: $67,655.60; Ongoing cost: $40.23/hour **Or no cost to business, if dropped at drop site**.
Yard debris	Option 2	Woodchipper, fuel, and labor. **No anticipated costs to businesses.** City of Grandview provided service.	One time set-up cost. Monthly ongoing cost for running system.	Total: $14,807.15; Ongoing cost: $32.01/hour **Or no cost to business, if dropped at drop site.**
Nursery articles**	Option 1	Purchase of greenhouse (unlikely), compliance agreement, inspection, and certification costs.	One time set-up cost. Weekly inspection/ certification costs.	Total: $40,251.64: Ongoing cost: $193.64 per inspection/ certification
Nursery articles**	Option 2	Compliance agreement, inspection, and certification costs.	One time cost for compliance agreement, then weekly inspection/ certification costs.	Total cost: $251.64; Ongoing cost: 193.64 per inspection/ certification
Nursery articles**	Option 3	Purchase of pesticide, application equipment, labor, developing application procedure. Additionally, compliance agreement, inspection, and certification costs.	Per acre treatment cost for pesticide and application equipment. One time cost for procedure and weekly inspection/certification costs.	Total (5 acres): $1,776.34; Per acre treatment cost $147.50
Nursery articles**	Option 4	Purchase of drench insecticide treatment, labor, developing application procedure. Additionally, compliance agreement, inspection, and certification costs.	Weekly or monthly cost for labor, drench insecticide, inspection/ certification. One time cost for procedure.	Total: $1,256.28; Ongoing cost $79.68 per hour, plus $193.64 weekly/monthly for inspection/certificate.
Nursery articles**	Option 5	Purchase of media (granule) treatment and developing application procedure. Additionally, compliance agreement, inspection, and certification costs.	Per treatment cost for media (granule). One time cost for procedure and weekly inspection/ certification costs.	Total: $1,158.84; Ongoing cost $40 per hour, plus $193.64 weekly/monthly for inspection/certificate.
Hops/Corn	Option 1	**No anticipated costs tobusinesses for surveying.** Department provided service. Costs for compliance agreement and inspection.	Annual compliance agreement and per inspection cost.	$275.14 per inspection and annual compliance agreement
Hops/Corn	Option 2	Cost for pesticide and treatment, compliance agreement, inspection/ certification, plus purchasing one-tarp and labor costs per vehicle.	Annual treatment cost and compliance agreement; one time purchase cost for tarp; per vehicle covering cost for labor; ongoing inspection/certification costs.	Total: $15,025.14 (if tarp used); Per acre treatment cost $147.50
Cut Flowers***	Option 1	Purchase of greenhouse (unlikely), cost of foliar pesticide, compliance agreement, inspection, and certification costs.	One time set-up cost. Ongoing pesticide application/inspection/ certification costs.	Total: $40,251.64: Ongoing cost: $193.64 per inspection/ certification + $147.50 'per acre' treatment cost.

Regulated Item	Treatment Option	Details	Cost Occurrence	Estimated Cost Totals
Cut Flowers***	Option 2	Costs for compliance agreement and inspection.	Annual compliance agreement and per inspection cost + weekly or monthly cost of labor for grower to remove adult beetles if present.	Total cost: $251.64; Ongoing cost: $193.64 per inspection/ certification + grower's labor rate to remove beetles if present

* The upper eight inches of topsoil containing vegetative material from all properties, including but not limited to residential, agricultural, and commercial properties (including construction sites); humus, compost (except when produced commercially), and growing media (except when commercially packaged).

** Plants for planting and propagation except when dormant and bareroot and free from soil or growing media: all plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turfgrass (sod).

*** The treatment costs incurred for cut flowers are contingent on both the businesses' size of greenhouse(s) and flower stock needing treatment. These costs are estimates based on data for similar treatments of different plant stock. For option 2, once growers visually inspect the flowers at harvest and find them to be free of Japanese beetles, the cut flowers must immediately be safeguarded in an enclosed vehicle or screened facility until shipment. If any adult Japanese beetles are found during the visual inspection, all adult beetles must be manually dislodged, and the cleaned cut plant material must immediately be safeguarded in an enclosed vehicle or screened facility until shipment.

SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.

As previously stated, there is insufficient data to determine exact costs businesses may incur because of the proposed rule amendments. This is because regulated articles will differ between businesses and treatment options used will vary. The size of the business may also change the cost required to comply. For example, a large business with 300 acres of hops may have costs of over $44,250 if they choose the more expensive treatment options, whereas a smaller business with two acres may only have costs around $295. For hop producers, if Japanese beetle is detected at one business and not the other, this will also affect costs.

It is assumed that businesses will choose the least expensive treatment option. Businesses that choose to purchase expensive capital equipment like steam generators will likely do so because the equipment can be used to bring in additional revenue from other projects and uses.

Businesses in the expanded quarantine area will not have more-than-minor costs imposed on them if they choose the cheaper treatment and inspection options that are available to them. Businesses will exceed the minor cost threshold if they choose to purchase the more expensive equipment, but that choice is not required by the rule.

Table 4.1 shows a range of estimated costs for treatment options for businesses in varying industries (identified by NAICS code). These treatment options can be as low as $0 and as high as $46,355.60 to purchase a new steam generator to treat soil. In Table 4.1, the red highlighted cells indicate the potential for costs to exceed the minor cost threshold.

Table 4.1: Estimated treatment costs compared to minor cost threshold by NAICS code.

NAICS Business Description	*Minor Cost Threshold	Mitigation Treatment Cost Range
Corn Farming (111150)	$2,759.57	$0 - $976.48 (calculated for 5 acres)
Nursery and Tree Production (111421)	$5,322.57	$251.64 - $40,251.64
Floriculture Production (111422)	$7,268.96	$193.64 - $40,251.64
All Other Miscellaneous Crop Farming (111998) (includes hop farming)	$11,775.64	$38.98 - $15,523.98 (calculated for 100 acres)
Residential Remodelers (236118)	$1,448.44	$0 - $46,330.90

NAICS Business Description	*Minor Cost Threshold	Mitigation Treatment Cost Range
Other Farm Product Raw Material Merchant Wholesalers (424590) (includes sod merchant wholesalers)	$8,809.55	$0 - $67,655.60
Farm Supplies Merchant Wholesalers (424910)	$46,474.97	$251.64 - $40,251.64
Nursery; Garden Center; and Farm Supply Stores (444220)	$4,675.20	$251.64 - $40,251.64
Landscape Architectural Services (541320)	$4,874.25	$0 - $67,655.60
Landscaping Services (561730)	$2,131.66	$0 - $67,655.60
Solid Waste Collection (562111)	$22,869.55	$0 - $67,655.60

* Of the minor cost thresholds list for each NAICS code in section 2, the higher minor cost threshold was used for comparison.

There are several industries that will be impacted by the proposed rule changes related to how soil samples are taken. However, it was determined that businesses in these industries will not incur additional costs related to attaching labels and double bagging soil samples. These industries are: 111219, Other Vegetable (except Potato) and Melon Farming, 111331 Apple Orchards, 111332 Grape Vineyards, 111334 Berry (except Strawberry) Farming, 111335 Tree Nut Farming, 111339 Other Non-citrus Fruit Farming, and 111940 Hay Farming.

SECTION 5: **Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

RCW 19.85.040(1) requires the department to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per $100 of sales.

Although there will be businesses in industries like construction and home remodeling that will service the expanded quarantine area, general contractors and excavation companies from anywhere in Washington state may take construction contracts in the quarantine area and it is difficult to identify who these businesses will be; there is not sufficient data to calculate the cost of compliance using the criteria from RCW 19.85.040(1).

Five corn-growing businesses were located inside the expanded quarantine area but employment information for these businesses could not be found.

Three landscaping companies that service the expanded quarantine area were identified, but employee information could not be found. It is difficult to measure the impacts to the landscaping industry because of the lack of employment information available.

Of the six hops growers that were found in the expanded quarantine area, five were small businesses and one was large. There will be disproportionate impacts on hop-producing small businesses based on the information collected.

Three nurseries were found in the expanded quarantine area and all three are small businesses. Large businesses in the nursery industry were not found in the expanded quarantine area, and all impacts will be to small businesses.

There will be businesses in several industries that must comply with the rule because of the soil sample requirements, but these businesses are not expected to see any cost increases at all.

Three businesses were identified in the expanded quarantine area that transport cut flowers to areas outside of the quarantine.

Table 5.1 shows the average cost per employee for large and small businesses by business description. The average cost range was divided by the average number of employees in each business type (small and large businesses calculated separately), but the department was not able to determine employee numbers for all impacted businesses.

Table 5.1: Average cost per employee for large and small businesses.

Business Description	Average Cost Range	Average Cost per Employee for Small Businesses	Average Cost per Employee for Large Businesses
Hops Production	$275.14 - $15,025.14	$25.01 - $1,365.92	$1.57 - $85.86
Nursery	$251.64 -$ 40,251.64	$125.82 - $20,125.82	*

* No businesses in size category for the specified NAICS code.
Data pertaining to the number of employees for all impacted businesses was obtained from Buzzfile.

Determining which treatment option a business will use is difficult, as some may already have the necessary equipment and supplies available. Treatment costs for nurseries will likely be higher for larger businesses, as they will require more plants to be treated and longer inspections, as well as more certificates issued. Treatment costs per acre for hop producers will likely be similar, with larger businesses seeing a higher cost due to treating more acres. The total costs may differ depending on the industry and specific scenario. However, when costs are spread out over the total number of employees that a business has, the cost per employee will be larger for smaller businesses and will create disproportionate impacts.

SECTION 6: **If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.**

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) Reducing, modifying, or eliminating substantive regulatory requirements: As a result of legislature funding, the department has been able to waive the compliance agreement and "Certificate of Quarantine Compliance" (CQC) document fee. The CQC, in essence, allows for a business to reuse a single CQC document for a shipping season's entirety and simply add treatments to it. In doing so, the business is able to avoid further regular inspection fees. Shipping nurseries with a CQC effectively save, on average, $6,000.00 on annual phytosanitary certificates and inspections. Businesses may expect these fee waivers so long as there is available funding from the legislature.

Additionally, the department will be providing the newly required handling and disposal advice labels to businesses which take soil samples from within the quarantine area and send them outside of the quarantine area. In doing so, the department is actively attempting to offset the label requirement costs which would otherwise be incurred by businesses.

Any additional reduction, modification, or elimination of the regulatory requirements of the proposed rule amendment could increase the risk of Japanese beetle spreading to other areas of Washington. This could threaten multiple Washington industries, which grow crops targeted by the pest. Additionally, there could be impacts to trade both domestically and internationally if Japanese beetle were to spread to other parts of the state.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements: The reporting requirements in the proposed rule amendment are necessary to verify shipments leaving the proposed quarantine area have been treated and no longer pose a high risk for spreading Japanese beetle into other areas of Washington. It is not possible to simplify, reduce, or eliminate these requirements and still ensure that the quarantine restrictions are being met.

(c) Reducing the frequency of inspections: Inspections are required to monitor treatments of regulated articles prior to movement out of a proposed quarantine area. The inspections determine the effectiveness of the treatment at neutralizing Japanese beetle. Any reduction in the frequency of inspections could result in the spread of this pest.

(d) Delaying compliance timetables: Delaying compliance timetables is not a viable mitigation measure. Any delay will result in a higher risk of spread for Japanese beetle. Although delaying compliance timetables is not an option, the department will continue to work with businesses to develop other effective treatment options.

(e) Reducing or modifying fine schedules for noncompliance: This rule does not contain any fines for noncompliance.

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates: The department has worked closely with industry groups in developing the rule amendments and no other mitigation techniques were suggested by small businesses or small business advocates. The department will continue to work with small businesses to develop cost-effective treatment options.

SECTION 7: **Describe how small businesses were involved in the development of the proposed rule.**

Industry groups representing small businesses were involved throughout the development of the proposed rule amendments. The department presented about Japanese beetle to stakeholders at over 25 meetings, open houses, and conventions. Some of these groups included WA Friends of Farms and Forests, WA State Grape Society, WA Grapevine Advisory Committee, WA Foundation Block Advisory Group, WA Nursery Advisory Committee, WA Hop Commission, WA Mint Commission, multiple pest boards, and private companies that operate in the area like Wilbur Ellis and GS Long. These presentations allowed the department to share information about the proposed rule amendment to stakeholders and gather feedback from them.

Draft rule language was shared with the hops, grape, and mint commissions so that they could present it at their internal meetings and keep their members informed. Feedback was sought from the commissions and their members to better understand any impacts from the original quarantine and estimate any impacts to businesses in the new expansion area, or from the draft rule changes.

Open houses in the quarantine area were available to the public to provide information on the draft rule changes, answer questions about the quarantine in general, and seek treatment consent from the local population. Department staff also attended the open houses to reach small business owners who may not be members of any commissions and may not be on any department email subscriber lists. Information was available at the open houses for small business owners and department contact information was handed out so that staff could be available for any follow-up questions from the businesses.

When the original quarantine was put in place in 2022, small businesses in multiple industries were contacted by the department directly to gain insight into their business practices and feedback on

possible mitigation measures. It was through this and consultation with experts that the treatment option list was developed.

Three laboratories in Washington state that process and analyze soil samples were contacted to determine what the impacts of the rule changes would be for businesses that collect soil samples and send them to be tested. These laboratories confirmed that they will continue to accept samples sent from the quarantine area and will not increase fees based on the disposal recommendations. Hops and grape commissioners also confirmed that their growers do not object to the labels being attached and understand the need for the rule change.

Surveys were emailed or mailed to businesses that are located inside or operate within the original quarantine area that was established in 2022, seeking feedback on the impacts to business processes caused by the quarantine. These surveys asked for information about any revenue or job losses that resulted from businesses having to comply with the rule and provided an opportunity for businesses to provide any other feedback about their experiences operating inside the quarantine area, but the department has not received any responses.

SECTION 8: **Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

Any business that chooses the lower option from the mitigation treatment cost range will likely not experience any job losses. The less costly options are not enough to impact the marginal cost of production for any one business and these smaller increases in actual costs would not result in a loss of labor hours. However, if a business chose the more expensive option from the mitigation treatment cost range and did not utilize the capital goods purchase to increase revenue in any other areas, the additional costs would likely result in job losses. The exact number of jobs that would be impacted is difficult to determine without knowing which end of the mitigation cost range any of the impacted businesses will choose, and without knowing what equipment a business might already own. Expensive equipment purchases would likely not be made primarily for the purpose of complying with the rule as there are cheaper options available, and if a business chose to purchase a steam generator or greenhouse, they would do so because the equipment would increase revenue and company profit through other uses.

A copy of the statement may be obtained by contacting Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

June 17, 2024
Greg Haubrich
Assistant Director

OTS-5250.1

AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

WAC 16-470-705 Areas under quarantine. (1) Exterior: The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia,

Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, the Provinces of Ontario and Quebec, and any other state, province, parish, or county where infestations of Japanese beetle are detected are declared to be under quarantine for Japanese beetle.

(a) The director may exempt individual counties of the states under quarantine from meeting the conditions in WAC 16-470-715 if the director determines that:

(i) The state has adopted and is enforcing restrictions on the interstate and intrastate movement of regulated articles that are equivalent to or exceed the restrictions placed on the movement of regulated articles as provided in WAC 16-470-715; and

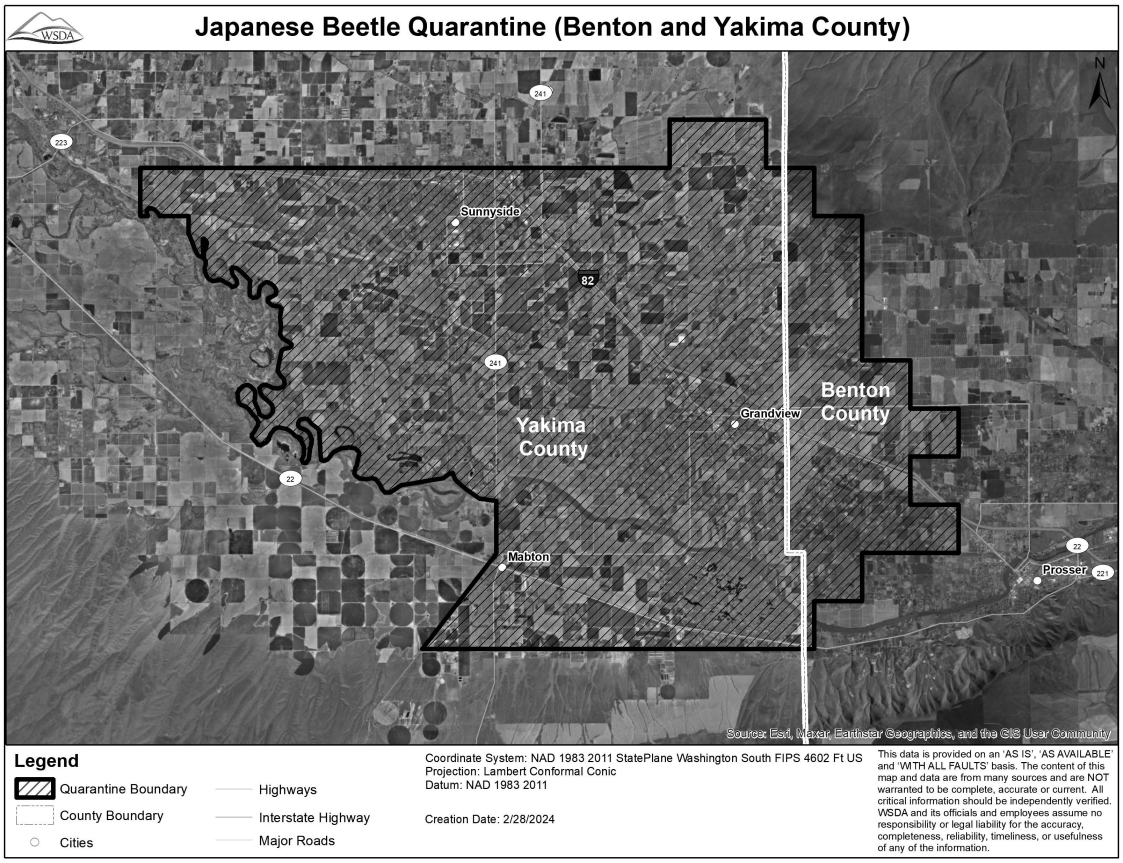
(ii) Annual surveys are conducted in such counties and the results of these surveys are negative for Japanese beetle; and

(iii) One or more neighboring counties are not subject to an unacceptable heavy Japanese beetle infestation.

(b) A plant health official of any state may request exemption of one or more counties under this subsection. The request must be in writing, and it must state the area surveyed, the survey method, personnel conducting the survey, and dates of any previous Japanese beetle infestations in that county.

(2) Interior: Within the state of Washington, those areas where infestations of Japanese beetle exist are declared to be under quarantine. These areas include the portion of Yakima and Benton counties designated as follows: Beginning within Yakima County at latitude ((~~N46°18'8" and longitude W120°0'26"; thence easterly across the Yakima-Benton County line to latitude N46°18'5" and longitude W119°51'39"; thence southerly to latitude N46°16'21" and longitude W119°51'40"; thence easterly to longitude W119°50'25"; thence southerly to latitude N46°13'44" and longitude W119°50'27"; thence westerly to latitude N46°13'44" and longitude W119°51'42"; thence southerly to latitude N46°12'00" and longitude W119°51'42"; thence westerly across the Yakima-Benton County line to latitude N46°12'3" and longitude W119°59'14"; thence northerly to latitude N46°14'39" and longitude W119°59'12"; thence westerly to longitude W120°0'28"~~)) N46°19'54" and longitude W120°09'12"; thence easterly to latitude N46°19'51" and longitude W119°55'24"; thence northerly to latitude N46°20'43" and longitude W119°55'23"; thence easterly to latitude N46°20'42" and longitude W119°52'53"; thence southerly to N46°19'50" and longitude W119°52'53"; thence easterly across the Yakima-Benton County line to latitude N46°19'50"; and longitude W119°51'38" southerly to latitude N46°18'57" and longitude W119°51'39"; thence easterly to latitude N46°18'57" and longitude W119°50'24"; thence southerly to latitude N46°16'21" and longitude W119°50'25"; thence easterly to latitude N46°16'20" and longitude W119°49'10"; thence southerly to latitude N46°15'28" and longitude W119°49'11"; thence easterly to latitude N46°15'28" and longitude W119°47'56"; thence southerly to latitude N46°14'35" and longitude W119°47'56"; thence westerly to latitude N46°14'36" and longitude W119°49'12"; thence southerly to latitude N46°13'44" and longitude W119°49'12"; thence easterly to N46°13'43" and longitude W119°47'57"; thence southerly to latitude N46°12'51" and longitude W119°47'58"; thence westerly to latitude N46°12'52" and longitude W119°50'28"; thence southerly to latitude N46°11'60" and longitude W119°50'29"; thence westerly to latitude N46°12'00" and longitude W119°51'44";

thence southerly to latitude N46°11'08" and longitude W119°51'44"; thence westerly to latitude N46°11'11" and longitude W120°01'55"; thence northerly and easterly along the Yakama Nation Reservation boundary line; thence northerly and turning westerly along the Yakama Nation Reservation boundary to latitude N46°18'42" and longitude W120°07'57"; then northerly to latitude N46°19'02" and longitude W120°07'57"; then westerly to latitude N46°19'02" and longitude W120°08'42"; thence northerly and westerly and turning southerly along the Yakama Nation Reservation boundary to latitude N46°19'02" and longitude W120°09'00"; thence westerly to latitude N46°19'02" and longitude W120°09'12"; thence northerly to the point of beginning.



AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

WAC 16-470-710 Regulated articles. The following are declared to be hosts or possible carriers of Japanese beetle and are regulated articles under the Japanese beetle quarantine:

(1) The upper eight inches of topsoil containing vegetative material from all properties including, but not limited to, residential, agricultural, and commercial properties (including construction sites);

(2) Humus and compost (except when produced commercially), ((~~and~~)) growing media (except when commercially packaged), and soil samples;

(3) Yard debris, meaning plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping, or similar activities. Yard debris includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris;

(4) Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media, including:

(a) All plants with roots;

(b) Plant crowns or roots;

(c) Bulbs;

(d) Corms;

(e) Tubers; and

(f) Rhizomes;

(5) Turfgrass (sod);

(6) Hop bines and unshucked corn ears harvested during the Japanese beetle adult flight season (May 15th through October 15th);

(7) Cut flowers for decorative purposes, including those exposed to open air environments during their harvest, transportation, or trade; and

(8) Any other plant, plant part, article, or means of conveyance when it is determined by the director to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation.

NEW SECTION

WAC 16-470-711 Signage requirements. Any business selling regulated articles under WAC 16-470-710 (4) or (7) which is located within the interior quarantine area (see WAC 16-470-705(2)) must post signage which is clearly visible at all business entrances, as well as points of sale and aisles in areas where these regulated articles are being sold. Businesses must use signage developed by or approved by the department, which must clearly state that regulated articles purchased cannot be transported outside of the quarantine area. Signs may be found on the department's website at http://agr.wa.gov/beetles and must be a minimum of 8.5" x 11" in size.

AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

WAC 16-470-717 Conditions governing the movement of regulated articles from internal quarantined areas. Regulated articles within the state of Washington quarantined areas are prohibited from moving outside the quarantined area (from all properties, including commercial and private properties), except as provided for below:

(1) The upper eight inches of topsoil containing vegetative material from all properties; humus and compost (except when produced commercially), ((~~and~~)) growing media (except when commercially packaged), and soil samples, may be allowed to move from the quarantine area if they are first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) Soil samples may be transported to a laboratory for testing outside of the quarantine area if they are securely double bagged and clearly labeled with the following statement, "This soil sample originates from a Japanese beetle quarantine area. Sample must either be securely double bagged prior to disposal or incinerated." Laboratories located within Washington state that are receiving soil samples originating from the quarantine area must either securely double bag the samples prior to disposal or incinerate the samples.

(c) Other treatments determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(2) Yard debris may be allowed to move from the quarantine area if it is first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) When consisting solely of woody materials containing no soil, yard debris may be chipped to a screen size of one inch in two dimensions or smaller during the Japanese beetle adult flight season (May 15th through October 15th). Woody material containing no soil can be moved outside of the Japanese beetle adult flight season without chipping;

(c) Another treatment determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(3) Plants for planting and propagation (except when dormant and bareroot and free from soil or growing media), all plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turfgrass (sod) may be allowed to move from the quarantine area if each shipment complies with one of the treatment or inspection requirements detailed under (a) through (f) of this subsection. Before the shipment moves outside the quarantined area, the shipment must be approved by the department. Approval will be documented by the issuance of a certificate of treatment or inspection when the department determines that the shipment is in compliance with the treatment or inspection requirements. The certificate must accompany the shipment while the shipment is in transit. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped dormant and bareroot with no soil or growing media attached are exempt from these requirements, and should be identified as bareroot on shipping documents.

(a) Production in an approved Japanese beetle free greenhouse/screenhouse. All the following criteria apply to be approved as a Japanese beetle free greenhouse/screenhouse. All media must be sterilized and free of soil. All planting stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period (May 15th through October 15th). During the adult flight period, the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot enter. Such security measures must be approved by the department. No Japanese beetle contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by the department for the presence of all life stages of Japanese beetle and must be specifically approved as a secure area. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed, and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the

department as having met and maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse and were grown in sterile, soilless media."

(b) Production during a pest free window. The entire rooted plant production cycle (planting, growth, harvest, and shipping) will be completed within a pest free window (October 16th through May 14th), in clean containers with sterilized and soilless growing medium, and shipment will occur outside the adult Japanese beetle flight period (May 15th through October 15th). The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season and were grown in sterile, soilless media."

(c) Application of approved regulatory treatments. All treatments will be performed under direct supervision of the department or under a compliance agreement. Treatments and procedures under a compliance agreement will be monitored throughout the season. State phytosanitary certificates listing and verifying the treatment used must accompany the shipment. Note that not all treatments or methods approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for use within Washington state. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control *Popillia japonica* according to the criteria for shipment to Category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Washington state's Japanese beetle quarantine."

(d) Dip treatment - Not an approved treatment.

(e) Drench treatments - Container plants only. Not approved for ornamental grasses or sedges. Not approved for field potted plants. Potting media used must be sterile and soilless, containers must be clean. Only containerized nursery stock with rootballs 12 inches in diameter or smaller and free from field soil are eligible. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season, they must be retreated with an approved insecticide. Chemicals approved for drench treatments of container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(f) Media (granule) incorporation - Container plants only. Not approved for ornamental grasses or sedges. Only containerized nursery stock with rootballs 12 inches in diameter or smaller, planted in approved growing media, and free from field soil are eligible. Plants grown in field soil and then potted into soilless container substrates are not eligible for certification using this protocol, unless all field soil is removed from the roots so plants are bareroot at the time of potting. All pesticides used for media incorporation must be mixed thoroughly into the media before potting and plants should be watered at least two times following media incorporation before shipment can begin. Approved growing media used must be free from soil and consist of synthetic or other substances (other than soil) used singly or in combinations. Examples of approved growing media include conifer bark, hardwood bark, expanded or baked clay pellets, expanded polystyrene beads, floral foam, ground coconut husk, ground cocoa pods, ground coffee hulls, ground rice husk, peat, perlite, pumice, recycled paper, rock wool, sawdust, sphagnum, styrofoam, synthetic sponge, vermiculite, and volcanic ash or cinder. The media shall contain only

substances that were not used previously for growing plants or other agricultural purposes. It must be free of plant pests, sand, and related matter, and safeguarded in such a manner as to prevent the introduction of all life stages of Japanese beetle to the media. The granules must be incorporated into the media before potting. Plants being stepped up into treated potting media must first have undergone an approved drench treatment to eliminate any untreated volume of potting medium. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season, they must be repotted with a granular incorporated mix or retreated using one of the approved drench treatments. Chemicals approved for media (granule) incorporation for container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(4) Hop bines and unshucked corn ears: Fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by the department and found free of Japanese beetle for the entire adult flight period (May 15th through October 15th), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by the department, bines and unshucked corn ears may be moved outside the quarantined area. If the department determines there is evidence of Japanese beetle presence, bines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance. All shipments of hop bines and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

(5) Cut flowers for decorative purposes: All shipments of cut flowers grown in the quarantined area, to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination address. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

WSR 24-13-080
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed June 17, 2024, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-059.

Title of Rule and Other Identifying Information: Chapter 388-823 WAC, Developmental disabilities administration intake and eligibility determination.

Hearing Location(s): On August 6, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of Intended Adoption: Not earlier than August 7, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on June 20, 2024, by 5:00 p.m. on August 6, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on July 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules to implement 2SHB 2008, which directs DDA to remove intelligence quotient (IQ) criteria from DDA enrollment processes. Additional changes have been made to combine and repeal redundant sections in the chapter, clarify language, and update intake and eligibility processes.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.10.020, 71A.16.020, and 74.08.090.

Statute Being Implemented: RCW 71A.10.020, 71A.16.020, and 74.08.090.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: William Nichol, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1583.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vii), a cost-benefit analysis is not required for rules that relate only to client medical or financial eligibility. Chapter 388-823 WAC establishes medical criteria for determining DDA eligibility.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

June 11, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5040.2

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-823-0010 Definitions. The following definitions apply to this chapter:

((~~"ABAS-II"~~)) "ABAS" means adaptive behavior assessment system((~~-second edition~~)), which is a comprehensive, norm-referenced assessment of adaptive behavior and skills of individuals from birth through age 89.

"Adaptive behavior" means age-appropriate behaviors people need to live and function independently in daily life.

((~~"CAS" means the DAS-Naglieri cognitive assessment system, a clinical instrument for assessing intelligence based on a battery of cognitive tasks. The test is used for children ages five through seventeen years eleven months.~~))

"Client" means a person ((~~with~~)) who has a developmental disability as defined in RCW 71A.10.020 and has been determined eligible for DDA under chapter 388-823 WAC ((~~who is currently eligible and active with the developmental disabilities administration (DDA)~~)).

"Community first choice" or "CFC" is a medicaid state plan program defined in chapter 388-106 WAC.

((~~"C-TONI" means the comprehensive test of nonverbal intelligence, a battery of six subtests, designed to measure different aspects of nonverbal intellectual abilities from ages six to eighteen years eleven months.~~

~~"DAS" means differential ability scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.~~))

"DABS" means diagnostic adaptive behavior scale, which is a comprehensive standardized assessment of adaptive behavior for people ages 4-21.

"DDA" means the developmental disabilities administration, an administration within department of social and health services.

"Department" means the department of social and health services.

"Diagnostic report" means a report that documents evidence of a developmental or intellectual disability.

"Documentation" means written information that provides support for certain claims, such as diagnoses, test scores, or residency for the purpose of establishing DDA eligibility.

((~~"DSM-IV-TR" means the diagnostic and statistical manual of mental disorders, fourth edition, text revision.~~))

"DSM-5" means the diagnostic and statistical manual of mental disorders, fifth edition.

"Eligible" means that DDA has determined that you have a condition that meets all of the requirements for a developmental disability as set forth in this chapter.

"ESIT" means early support for infants and toddlers, a program administered by the department of ((~~early learning~~)) children, youth, and families under chapter 110-400 WAC.

"Expiration date" means a specific date that your eligibility as a client of DDA and all services paid by DDA will stop.

((~~"FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of measurement value will not be taken into consideration when making a determination for DDA eligibility.~~))

"Functional limitation" means a reduced ability or lack of ability to perform an action or activity in the manner or within the range considered to be normal.

"ICAP" means the inventory for client and agency planning. This is ((~~a standardized~~)) an adaptive behavior assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. ((~~The goal is to get a snapshot of his/her ability.~~

~~"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.~~

~~"Leiter-R" means Leiter international performance scale - revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.~~))

"Medicaid personal care" or "MPC" is a medicaid state plan program as defined in chapter 388-106 WAC.

"Necessary supplemental accommodation" means services designed to afford people equal access to DDA services as described in chapter 388-472 WAC.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

((~~"Nonverbal" means that you do not possess sufficient verbal skills to complete a standard intellectual test.~~))

"NSA" means necessary supplemental accommodations, which are services provided to you if you have a mental, neurological, physical, or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

"Review" means DDA must determine that ((~~a current client of DDA~~)) an enrolled person still meets ((~~all of~~)) the requirements for a developmental disability as set forth in this chapter.

"RHC" means a residential habilitation center operated by the DDA.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by DDA.

((~~"Stanford-Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.~~))

"Termination" means an action taken by DDA that stops your DDA eligibility and services paid by DDA. If your DDA eligibility is terminated your DDA authorized services will also be terminated. If you remain eligible for community first choice (CFC) or medicaid personal care (MPC) and you are under the age of ((~~eighteen~~)) 18 DDA will continue to authorize this service. If you are ((~~eighteen~~)) 18 or older CFC or MPC services will be authorized by the aging and long-term support administration.

"VABS" means Vineland adaptive behavior scales, which is an assessment to measure adaptive behavior in children from birth but under age ((~~eighteen~~)) 18 years, nine months and in adults with low functioning in four separate domains: Communication, daily living skills, socialization, and motor skills.

((~~"Wechsler" means the Wechsler intelligence scale, which is an individually administered measure of an individual's capacity for intelligent behavior. There are three Wechsler intelligence scales, dependent upon the age of the individual:~~

~~• Wechsler preschool and primary scale of intelligence for children at least age three years but under age seven years;~~

~~• Wechsler intelligence scale for children at least age six years but under age sixteen years; and~~

~~• Wechsler adult intelligence scale for individuals at least age sixteen years but under age seventy-four years.~~

~~"WJ III(r)" means the Woodcock-Johnson(r) III, a test which is designed to provide a co-normed set of tests for measuring general intellectual ability, specific cognitive abilities, scholastic aptitude, oral language, and academic achievement. The WJ III(r) is used for ages two and up.~~))

AMENDATORY SECTION (Amending WSR 15-01-021, filed 12/5/14, effective 1/5/15)

WAC 388-823-0015 How does the state of Washington define developmental disability? The state of Washington defines developmental disability in RCW 71A.10.020((~~(5)~~)).

(1) To qualify for DDA you must have a diagnosed condition of intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition found by DDA to be closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability which:

(a) Originates ((~~prior to~~)) before age ((~~eighteen~~)) 18;

(b) Is expected to continue indefinitely; and

(c) Results in substantial limitations.

(2) In addition to the requirements listed in subsection (1) of this section, you must meet the other requirements contained in this chapter.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0020 How do I ((~~become a client of~~)) enroll with the developmental disabilities administration? (1) You ((~~become a client of~~)) may enroll with the developmental disabilities administration (DDA) if you apply for eligibility with DDA and DDA determines that you meet all eligibility criteria required to establish a developmental disability as defined in this chapter.

((~~(1)~~)) (2) You apply to become a client of DDA by ((~~calling the regional~~)) contacting a DDA office ((~~or a local DDA office~~)) and requesting a DDA eligibility packet ((~~be sent to you~~)). You may also download, complete, and ((~~print the~~)) return an eligibility packet at ((~~http://dshs.wa.gov/ddd/eligible.shtml~~)) https://www.dshs.wa.gov/dda/consumers-and-families/eligibility.

((~~(2)~~)) (3) You must complete and return the required forms, along with ((~~all~~)) any supporting documentation that you have((~~, to address any disability indicated in the eligibility packet~~)).

AMENDATORY SECTION (Amending WSR 18-17-028, filed 8/6/18, effective 9/6/18)

WAC 388-823-0025 Who may apply for a DDA eligibility determination? (1) You may apply for a DDA eligibility determination ((~~on your own behalf~~)) for yourself.

(2) A person may ((~~submit an application~~)) apply for a DDA eligibility determination on your behalf if the person is:

(a) Delegated to consent to routine medical care for you under WAC ((~~388-148-1560~~)) 110-148-1560;

(b) Your parent if you are under ((~~eighteen~~)) 18;

(c) Your caretaker relative under WAC 182-500-0020;

(d) Your spouse;

(e) Your authorized representative under WAC 182-503-0130; ((~~or~~))

(f) Applying for you because a medical condition prevents you from applying ((~~on your own behalf.~~)); or

(g) Someone to whom you or the courts have given permission to apply on your behalf.

(3) If you or your ((~~legal~~)) authorized representative request it, DDA will withdraw your eligibility application or terminate your eligibility.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0055 Who is responsible for obtaining ((~~the~~)) required documentation ((~~needed to make my eligibility determination~~))? (1) You are responsible ((~~to provide all of~~)) for providing the infor-

mation required ((~~by DDA~~)) to ((~~make a determination~~)) determine DDA eligibility.

(2) If you provide DDA with a signed consent form and contacts, DDA will assist in obtaining records.

((~~(1) If you provide DDA with a signed consent form and the sources for obtaining the documentation DDA may be able to assist you in obtaining records.~~)) (3) Evidence required to make an eligibility determination includes, but is not limited to:

(a) ((~~School psychologist and/or licensed psychologist evaluations~~)) Evaluations and reports from a school psychologist, a licensed psychologist, or both;

(b) Evidence of ((~~medical diagnoses by a licensed physician,~~)) a qualifying condition;

(c) ((~~Cognitive~~)) Clinical and diagnostic tests measuring a person's development and adaptive skills test results and accompanying reports((~~,~~));; and

(d) Mental health records.

((~~(2)~~)) (4) DDA will not pay for ((~~the purchase of~~)) diagnostic ((~~assessments~~)), ((~~intelligence quotient (IQ) testing~~)) developmental, or adaptive skills ((~~testing~~)) assessments.

((~~(3) If DDA determines that you have a qualifying condition and your records do not include an adaptive skills assessment per WAC 388-823-0710 administered within the past thirty-six months, DDA may administer the inventory of client and agency planning (ICAP) to determine your level of adaptive functioning to meet the substantial limitation requirement. DDA will administer the ICAP at no expense to you.~~))

(5) If you cannot provide DDA with an adaptive assessment completed in the last 36 months, but you otherwise meet DDA eligibility criteria, DDA will offer to administer the ICAP for you at no cost.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0075 What if I do not have written evidence that my disability began before my ((~~eighteenth~~)) 18th birthday? (1) If there is no documentation available about your ((~~early developmental history, educational history, illnesses, or injuries, DDA may accept verbal information from your family or others who knew you prior to the age of eighteen to verify that your disability began prior to age eighteen~~)) condition existing before age 18, DDA may accept an attestation - either verbal or written. The attestation must confirm your condition began before age 18 and may be from someone who knows you or a self-attestation verified by another person who knows you. The information must be specific and reliable, and it cannot substitute for documentation that could be obtained with reasonable diligence.

(2) Additional evidence of your eligible condition and the resulting substantial limitations is still required.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0090 How long will it take to complete a determination of my eligibility? (1) DDA has ((~~thirty~~)) up to 30 days from receipt of the final piece of requested documentation to make ((~~the~~)) a determination of eligibility.

((~~(1)~~)) (2) If DDA has received all requested documentation and ((~~it is sufficient to~~)) can establish eligibility, DDA will ((~~make a determination of eligibility and send you written notice of eligibility~~)) provide written and verbal notice.

((~~(2)~~)) (3) If DDA ((~~has received all requested documentation but it is insufficient to establish eligibility, DDA will make a determination of ineligibility and send you written notice of denial of eligibility~~)) cannot establish eligibility, DDA will send written and verbal notice of the reason for the ineligible decision.

((~~(3)~~)) (4) If DDA has insufficient information to determine you eligible and has not received all of the requested documentation, DDA may deny ((~~your~~)) eligibility after ((~~ninety~~)) 90 days from the date of application. Rules governing reapplying for eligibility are in WAC 388-823-1080.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0100 What is the effective date of my eligibility determination? ((~~(1) If DDA receives sufficient information to substantiate your DDA eligibility, the~~)) The effective date of your DDA eligibility ((~~as a DDA client~~)) is the date ((~~of receipt of~~)) DDA receives the final piece of documentation needed to make an eligibility determination.

((~~(2) DDA services cannot begin before the effective date of your DDA eligibility.~~))

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0105 How will DDA notify me of the results of my eligibility determination? (1) DDA will ((~~send you~~)) provide written and verbal notification of the ((~~final~~)) determination ((~~of your eligibility per WAC 388-825-100~~)).

((~~(1) If you are not eligible, the written notice will explain why you are not eligible, explain your appeal rights to this decision, and provide you with an administrative hearing request form.~~))

(2) If you are determined eligible, the written ((~~notice~~)) notification will include:

(a) Your ((~~eligibility~~)) eligible condition(s);

(b) The effective date of your eligibility;

(c) The expiration date or review date of your eligibility, if applicable; and

(d) The name and phone number of your DDA primary contact.

(3) If you are determined not eligible, the written notification will:

(a) Explain the decision;
(b) Explain your appeal rights to the decision; and
(c) Provide you with an administrative hearing request form.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0115 If I am ((~~eligible to be a client of~~)) enrolled with DDA, will I receive DDA services? If ((~~DDA determines that you are eligible to be a client of~~)) enrolled with DDA, your access to services ((~~as a DDA client~~)) depends on ((~~your~~)) meeting eligibility requirements for the ((~~specific~~)) service. ((~~DDA paid services are described in WAC 388-825-057.~~)) Your eligibility for services is determined separately from your DDA enrollment.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0200 How do I show that I have intellectual disability as an eligible condition? ((~~In order to be considered for eligibility under the condition of intellectual disability you must be age four or older and have a diagnosis of mental retardation as specified in the DSM-IV-TR or intellectual disability as specified in the DSM-5. This diagnosis must meet the following criteria:~~

~~(1) The diagnosis must be made by a licensed psychologist, or be a finding of intellectual disability by a Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.~~

~~(2) An acceptable diagnostic report includes documentation of all three diagnostic criteria specified in the DSM-IV-TR or DSM-5.~~))

To be considered eligible with intellectual disability, you must have a diagnosis of intellectual disability or an equivalent diagnosis. This diagnosis must meet the following criteria:

(1) The condition must have onset before age 18;

(2) The diagnosis must be made by a licensed psychologist, a Washington certified school psychologist, or other school psychologist certified by the National Association of School Psychologists; and

(3) The diagnosis must be documented in an acceptable diagnostic report.

AMENDATORY SECTION (Amending WSR 15-01-021, filed 12/5/14, effective 1/5/15)

WAC 388-823-0210 If I have intellectual disability, how do I meet the definition of substantial limitations? ((~~If you have an eligible condition of intellectual disability, in order to meet the definition of substantial limitations you must have:~~

~~(1) Documentation of a full-scale intelligence quotient (FSIQ) score of more than two standard deviations below the mean per WAC 388-823-0720, and subject to all of WAC 388-823-0720 and 388-823-0730, and~~

~~(2) Documentation~~)) To meet the definition of substantial limitations for intellectual disability, you must have documentation of an adaptive skills test score of more than two standard deviations below the mean ((~~as described~~)) in accordance with ((~~WAC 388-823-0740 and subject to all of~~)) WAC 388-823-0740 and 388-823-0750.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0300 How do I show that I have cerebral palsy as an eligible condition? (1) ((~~In order to~~)) To be considered ((~~for eligibility under the condition of~~)) eligible with cerebral palsy, you must ((~~be age four or older and~~)) have a diagnosis ((~~by a licensed physician~~)) of cerebral palsy or similar ((~~brain~~)) cerebral damage which causes((~~, quadriplegia, hemiplegia, or diplegia~~)) full or partial limb paralysis, with evidence of onset ((~~prior to~~)) before age ((~~three~~)) 18.

(2) DDA accepts a diagnosis from:

(a) A licensed physician; or

(b) A physician assistant or advanced registered nurse practitioner (ARNP) associated with a neurological practice.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations? ((~~If you have an eligible condition of cerebral palsy, in order to~~)) To meet the definition of substantial limitations for cerebral palsy, you must demonstrate the need for direct physical assistance, ((~~per~~)) as defined in WAC 388-823-0760, with two or more of the following activities as a result of your condition:

(1) Toileting;
(2) Bathing;
(3) Eating;
(4) Dressing;
(5) Mobility; or
(6) Communication.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0400 How do I show that I have epilepsy as an eligible condition? ((~~In order to~~)) To be ((~~considered for eligibility under the condition of~~)) eligible with epilepsy, you must ((~~be age four or older and~~)) have a diagnosis of epilepsy or a neurological condition that produces seizures.

(1) You must show evidence that your epilepsy or seizure disorder originated ((~~prior to~~)) before age ((~~eighteen~~)) 18 and is expected to continue indefinitely.

(2) The diagnosis must be made by a ((~~board certified~~)) licensed neurologist ((~~and be supported with documentation of medical history with neurological testing~~)).

(3) You must provide confirmation from ((~~your~~)) a physician or neurologist that your seizures are ((~~currently uncontrolled and ongoing or recurring and cannot be controlled by medication~~)) ongoing despite medical intervention.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0410 If I have epilepsy, how do I meet the definition of substantial limitations? ((~~If you have an eligible condition of epilepsy, in order to~~)) To meet the definition of substantial limitations for epilepsy, you must have documentation of an adaptive skills test score ((~~that reflects your daily functioning~~)) of more than two standard deviations below the mean ((~~as described in WAC 388-823-0740 and subject to all of~~)) in accordance with WAC 388-823-0740 and 388-823-0750.

AMENDATORY SECTION (Amending WSR 22-01-037, filed 12/6/21, effective 1/6/22)

WAC 388-823-0500 How do I show that I have autism as an eligible condition? (1) To be considered ((~~for eligibility under the condition of~~)) eligible with autism:

(a) ((~~You must be age four or older;~~

~~(b)~~)) You must ((~~have been~~)) be diagnosed with:

(i) Autism spectrum disorder ((~~299.00 under the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5)~~)); or

(ii) Autistic disorder ((~~299.00 under the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR)~~)) before February 1, 2022;

(b) The condition must have originated before age 18; and

(c) You must have been diagnosed by:

(i) A ((~~board-certified~~)) licensed neurologist;

(ii) A ((~~board-certified~~)) licensed psychiatrist;

(iii) A licensed psychologist;

(iv) A licensed developmental and behavioral pediatrician; or

(v) ((~~An advanced registered nurse practitioner (ARNP)~~)) One of the following professionals associated with an autism center, developmental center, or center of excellence((~~,~~)):

((~~(v)~~)) (A) A licensed physician; ((~~associated with an autism center, developmental center, or center of excellence; or~~

~~(vi) A board certified developmental and behavioral pediatrician.~~

~~(d) The condition must be expected to continue indefinitely; and~~

~~(e) You must provide evidence of onset before age five.~~))

(B) An ARNP;

(C) A physician assistant; or

(D) A naturopath.

(2) ((~~An acceptable diagnostic report includes documentation of diagnostic criteria specified in:~~

~~(a) The DSM-5; or~~

~~(b) DSM-IV-TR for a diagnostic report dated before February 1, 2022.~~)) The diagnosis must be documented in a diagnostic report.

AMENDATORY SECTION (Amending WSR 22-12-055, filed 5/26/22, effective 6/26/22)

WAC 388-823-0510 What constitutes substantial limitation due to autism? ((~~(1)~~)) To establish substantial limitation due to autistic disorder ((~~diagnosed under the DSM-IV-TR~~)) or autism spectrum disorder, you must have an adaptive skills test score more than two standard deviations below the mean ((~~as described in WAC 388-823-0740 and subject to all of~~)) in accordance with WAC 388-823-0740 and WAC 388-823-0750.

((~~(2) To establish substantial limitation due to autism spectrum disorder diagnosed under the DSM-5 you must:~~

~~(a) Have an adaptive-skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and~~

~~(b) Have either:~~

~~(i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or~~

~~(ii) A written statement from a qualified professional that your autism prevents you from completing FSIQ testing. "Qualified professional" means:~~

~~(A) Board-certified neurologist;~~

~~(B) Board-certified psychiatrist;~~

~~(C) Licensed psychologist;~~

~~(D) Licensed physician associated with an autism center, developmental center, or center of excellence;~~

~~(E) Board-certified developmental and behavioral pediatrician; or~~

~~(F) Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.~~))

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability? (1) ((~~In order to~~)) To be considered for eligibility ((~~under the category of~~)) with another neurological or other condition similar to intellectual disability you must:

((~~(1) Be age four or older and have~~)) (a) Have a diagnosis ((~~by a licensed physician~~)) of a neurological or chromosomal disorder that:

((~~(a)~~)) (i) Originated before age 18;

((~~(b)~~)) (ii) Is known by reputable authorities to cause intellectual and adaptive ((~~skills~~)) skill deficits;

((~~(c)~~)) (iii) Is expected to continue indefinitely without improvement;

((~~(d)~~)) (iv) Is other than intellectual disability, autism, cerebral palsy, or epilepsy; and

((~~(c)~~)) (v) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; ((~~and~~

~~(f) Has resulted in substantial functional limitations.~~)) or

((~~(2)~~)) (b) Be receiving fee-for-service medically intensive children program (MICP) services under ((~~chapter 182-551~~)) WAC 182-551-3000, and have been continuously eligible for DDA due solely to your MICP eligibility since before August 13, 2018((~~; or~~

~~(3) Be under the age of 20 and have one or more developmental delays~~)).

(2) You must have been diagnosed by:

(a) A licensed physician;

(b) Geneticist; or

(c) One of the following professionals associated with a neurological clinic or genetic testing center:

(i) An ARNP; or

(ii) A physician assistant.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations? (1) If you have an eligible condition of another neurological or other condition similar to intellectual disability, ((~~in order~~)) to meet the definition of substantial functional limitations you must have ((~~impairments in both intellectual abilities and adaptive skills, which are separate from any impairment due to an unrelated mental illness, or emotional, social, or behavioral disorder.~~))

~~(1) For a neurological or chromosomal disorder, evidence of substantial functional limitations requires documentation of (a) and (b) below:~~

~~(a) For impairment in intellectual abilities, either subsection (i) or (ii) or (iii) of this section:~~

~~(i) An FSIQ score of more than 1.5 standard deviations below the mean under WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730;~~

~~(ii) If you are under the age of 20, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or~~

~~(iii) A written statement from a licensed physician, a licensed psychologist, or a school psychologist that your condition prevents you from completing FSIQ testing.~~

~~(b) For impairment in~~)) an adaptive skills test((~~, a~~)) score of more than two standard deviations below the mean ((~~under WAC 388-823-0740 and subject to all of~~)) in accordance with WAC 388-823-0740 and WAC 388-823-0750.

(2) For ((~~the medically intensive children's program,~~)) WAC 388-823-0600(2) you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the fee-for-service medically intensive children program under chapter 182-551 WAC.

((~~(3) For developmental delays, evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:~~

~~(a) You are under the age of three and have one or more developmental delays under WAC 388-823-0770;~~

~~(b) You are under the age of three and meet the ESIT eligibility requirements; or~~

~~(c) You are under the age of 20 and have three or more developmental delays under WAC 388-823-0770.~~))

DEVELOPMENTAL DELAY

NEW SECTION

WAC 388-823-0620 How do I show that I have a developmental delay as an eligible condition? To be eligible with developmental delay, you must be:

(1) Under the age of three and have one or more developmental delays;

(2) Under the age of three and meet the ESIT eligibility requirements; or

(3) Under the age of 20 and have three or more developmental delays.

NEW SECTION

WAC 388-823-0630 What evidence do I need of developmental delays? (1) To qualify under developmental delay, DDA must receive evidence showing a standard deviation of at least 1.5 or 25% or more of the chronological age in at least one of the following developmental areas:

(a) Fine or gross motor skills;

(b) Self-help/adaptive skills;

(c) Expressive or receptive communication, including American Sign Language;

(d) Social/emotional skills; and

(e) Cognitive, academic, or problem-solving skills.

(2) The evidence of developmental delay must be:

(a) Measured using an age-appropriate diagnostic assessment; and

(b) Assessed within the past 18 months, except when written confirmation explains the previously measured delay remains valid.

(3) DDA accepts a written statement from a qualified professional stating that your developmental delay prevents you from completing testing.

(4) The assessment must be completed by one of the following professionals qualified to assess the developmental areas outlined above:

(a) Licensed physician or physician assistant;

(b) Licensed psychologist or certified school psychologist;

(c) Speech language pathologist;

(d) Audiologist;

(e) Licensed occupational therapist;
(f) Licensed physical therapist;
(g) ARNP or registered nurse;
(h) Certified teacher;
(i) Master's level social worker; or
(j) Orientation and mobility specialist.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0740 What evidence do I need of my adaptive skills limitations? (1) ((~~Evidence of substantial limitations of adaptive functioning requires a qualifying score completed in the past thirty-six months on one of the tests shown in the table below:~~)) For evidence of adaptive skills limitations, DDA accepts a qualifying score from one of the following assessments completed in the past 36 months.

Assessment	Qualifying Score
Vineland adaptive behavior scales (VABS)	An adaptive behavior composite score of 69 or less
Scales of independent behavior - Revised (SIB-R)	A broad independence standard score of 69 or less
Adaptive behavior assessment system ((~~- Second edition (ABAD-II)~~)) (ABAS)	An adaptive behavior composite score of 69 or less
Inventory for client and agency planning (ICAP)	A broad independence standard score of 69 or less
Diagnostic adaptive behavior scale (DABS)	A broad total adaptive score of 69 or less

(a) ((~~Tests~~)) Assessments must be administered and scored by professionals who have a background in individual assessment, human development and behavior, ((~~and~~)) tests and measurements, ((~~as well as an understanding~~)) and knowledge of individuals with disabilities.

(b) ((~~Tests must be administered following the instructions for the specific test used.~~)) DDA will administer or arrange for the administration of the ICAP only if results from one of the other acceptable tests are not available within the past 36 months.

(c) ((~~Department~~)) Authorized administration staff or ((~~designee contracted with DDA~~)) contracted designee must administer the ICAP.

((~~(d) DDA will administer or arrange for the administration of the ICAP only if results from one of the other acceptable tests are not available.~~))

(2) The adaptive test score cannot be a result of:

((~~an~~)) (a) An unrelated mental illness or other psychiatric condition occurring at any age; or

((~~other~~)) (b) Another illness or injury occurring after age ((~~eighteen~~)) 18.

((~~(a)~~)) (3) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your adaptive functioning ((~~impairment~~)), measured by an adaptive skills test,

would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

((~~(b)~~)) (a) "Acceptable documentation" means written reports or statements that are directly related to ((~~the subject at issue~~)) adaptive functioning, reasonable ((~~in light of all~~)) considering the evidence, and from a ((~~source of appropriate authority~~)) qualified professional. The determination of whether a document is acceptable is made by DDA.

((~~(c)~~)) (b) If no documentation is provided or DDA determines that the documentation is not acceptable DDA ((~~will~~)) may deny eligibility. The determination ((~~may~~)) can be challenged through an administrative appeal.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0750 If I have more than one adaptive test score, what criteria will DDA use to select the adaptive test for determining eligibility? If you have more than one adaptive test score ((~~during the thirty-six~~)) from the 36 months ((~~prior to your~~)) before an eligibility determination, DDA will accept the most recent assessment that ((~~test score obtained closest to the date of review or application providing it is a valid score and~~)) reflects adaptive functioning due to your developmental disability.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0760 ((~~What evidence~~)) How do I ((~~need to~~)) show my need for direct physical assistance? (1) ((~~The~~)) To show your need for direct physical assistance, your impaired motor control must require ((~~with~~)) direct physical assistance to complete activities of daily living ((~~is due to your impaired motor control and means~~)) resulting in:

(a) ((~~You~~)) The need ((~~the presence and~~)) for physical assistance ((~~of another person on a daily basis to be able~~)) to communicate ((~~and be understood by any other~~)) with another person on a daily basis.

(i) ((~~If you are able to communicate through~~)) Effective use of a communication device ((~~you will be~~)) is considered independent ((~~in~~)) communication.

(ii) ((~~You must require more~~)) More than ((~~"setting up" of the~~)) communication device set up is required.

(b) ((~~You~~)) The need for direct physical assistance ((~~from another person on a daily basis~~)) with toileting, bathing, eating, dressing, or mobility on a daily basis.

(i) ((~~You require more~~)) "Direct physical assistance" means more than ((~~"setting up" the~~)) task set up ((~~to enable you to perform the task independently~~)) and support to physically transfer to the task are required.

(ii) ((~~You must require direct physical assistance for more than transferring in and out of wheelchair, in and out of the bath or shower, and/or on and off of the toilet.~~

~~(iii) Your ability to be mobile is your ability to move yourself from place to place, not your ability to walk. For instance, if you can transfer in and out of a wheelchair and are independently mobile in a wheelchair, you do not meet the requirement for direct physical assistance with mobility~~)) "Mobility" means the ability to move from place to place independently regardless of the use of mobility aides.

(2) Any of the following can be used as documentation of ((~~your~~)) direct physical assistance needs:

(a) The comprehensive assessment reporting evaluation (CARE) tool or other department assessments that measure direct assistance needs in the areas specified above;

(b) Assessments and reports from educational or healthcare professionals that ((~~are current and consistent with your current functioning~~)) describe direct assistance needs;

(c) In the absence of professional reports or assessments, DDA may document its own observation of ((~~your~~)) direct assistance needs ((~~along with reported~~)) and information reported by ((~~family and others~~)) people familiar with you.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0910 What is the purpose of ICAP? The ((~~purpose of the~~)) ICAP ((~~is to assess your~~)) assesses adaptive skills in the areas of motor ((~~skills~~)), personal living ((~~skills~~)), social, ((~~and~~)) communication ((~~skills~~)), and community living ((~~skills~~)).

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0920 What sections of the ICAP does DDA or a contracted designee ((~~contracted with DDA~~)) complete and score? (1) DDA ((~~or a designee contracted with DDA~~)) completes the adaptive behavior portion of the ICAP.

(2) There is ((~~a computer generated~~)) an age-based broad independence score of your adaptive skills in the areas of motor ((~~skills~~)), personal living ((~~skills~~)), social, ((~~and~~)) communication ((~~skills~~)), and community living ((~~skills, based on your age~~)).

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0930 How does DDA ((~~or a designee contracted with DDA~~)) administer the ICAP? (1) DDA or a contracted designee ((~~contracted with DDA~~)) completes the adaptive section of the ICAP by interviewing a qualified respondent who has ((~~known you for at least three months and who sees you on a day-to-day basis. You cannot be the respondent for your own ICAP~~)) an established relationship with you. The qualified respondent must be someone who has interacted with you on a regular basis for at least three months.

(2) DDA or a contracted designee ((~~contracted with DDA~~)) will choose the respondent and may interview more than one respondent to ensure that information is complete and accurate.

(3) DDA or a contracted designee ((~~contracted with DDA~~)) will ask ((~~you to demonstrate some of the~~)) for a skills ((~~in order~~)) demonstration to evaluate ((~~what skills you are able to perform~~)) current functioning. ((~~DDA or a designee contracted with DDA cannot administer the ICAP if no respondent is identified and available.~~))

(4) DDA cannot administer the ICAP when:

(a) There is no respondent identified and available. You cannot be the respondent for your own ICAP.

(b) There is a previous, valid ICAP or adaptive skills test score from the past 36 months.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

WAC 388-823-1005 When does my eligibility as a DDA client expire? (1) ((~~If you are determined eligible before age three, your eligibility expires on your fourth birthday.~~

~~(2) If you are determined eligible with developmental delays after your third birthday, your eligibility expires on your 20th birthday.~~

~~(3) DDA will notify you at least six months before your eligibility expiration date.~~

~~(4) If your eligibility expires, you must reapply in order to maintain eligibility with DDA.~~

~~(5) If DDA receives your reapplication less than 60 days before your expiration date and does not have sufficient time to make an eligibility determination by the date of expiration, your DDA eligibility will expire and your DDA paid services will stop.~~

~~(a) If DDA determines you are eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines you eligible under WAC 388-823-0100.~~

~~(b) If DDA determines you are eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.~~

~~(6) This expiration of eligibility takes effect if DDA is unable to locate you to provide written notification that eligibility is expiring.~~

~~(7) There is no appeal right to eligibility expiration.~~)) If you are enrolled before your third birthday with developmental delay(s), your eligibility expires on your fourth birthday.

(2) If you are enrolled with developmental delays on or after your third birthday, your eligibility expires on your 20th birthday.

(3) DDA will notify you in writing at least six months before your eligibility expiration date.

(4) If your eligibility expires, you must reapply to stay enrolled with DDA.

(5) DDA eligibility will expire and DDA paid services will stop if DDA receives your reapplication less than 60 days before the expiration date and does not have sufficient time to make a determination.

(6) Eligibility will be reinstated if DDA determines you are eligible after an expiration date. You are reenrolled on the date a new determination is made.

(7) Eligibility will expire if DDA is unable to locate you to provide written notice of expiration.

(8) There is no appeal right to eligibility expiration.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA? (1) While DDA may review your eligibility at any time, DDA will review your eligibility:

(a) ((~~If you are~~)) At age 19 ((~~and:~~

~~(i) Your~~)) when the most recent eligibility determination was completed before ((~~your 16th birthday; and~~)) age 16.

((~~(ii) You are eligible with intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to intellectual disability.~~))

(b) ((~~If you are~~)) At age 19 ((~~and are~~)) when determined eligible with another neurological or other condition similar to intellectual disability and ((~~have used~~)) academic delays were used as evidence of ((~~your~~)) substantial functional limitations.

(c) Before authorization of any DDA-paid service if ((~~you are~~)) one is not currently receiving paid services and ((~~your~~)) the most ((~~current~~)) recent eligibility determination was ((~~made~~)) before June 1, 2005.

(d) If the evidence used to make the most recent eligibility determination is insufficient, contains an error, or appears fraudulent.

(e) If new information becomes available that does not support ((~~your~~)) the current eligibility determination.

((~~(e)~~)) (f) If you ((~~were~~)) are determined eligible due solely to ((~~your eligibility for~~)) enrollment in the fee-for-service (FFS) medically intensive children's program (MICP) ((~~services and you are~~)) but you are no longer eligible for FFS MICP services.

(2) DDA will notify you in writing at least six months before your eligibility review date.

((~~If DDA does not receive all of the documentation necessary to determine you are eligible during~~)) (3) When a review((~~, DDA will terminate your~~)) occurs and there is insufficient information to determine your eligibility, DDA can disenroll you:

(a) On your 20th birthday if ((~~the review is because you are~~)) it is an age 19 review; or

(b) 90 days after ((~~DDA requests~~)) the information is requested, if the review is because:

(i) ((~~You have requested a~~)) A paid service is requested;

(ii) The evidence used to make the most recent eligibility determination is insufficient, contains an error, or appears fraudulent;

(iii) New information is available that does not support ((~~your~~)) the current eligibility determination; or

((~~(iii)~~)) (iv) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1060 How ((~~will~~)) does DDA notify me of its decision? DDA will notify you and your legal representative or ((~~one~~)) other responsible ((~~party~~)) parties - verbally and in writing - of ((~~its~~)) a determination of eligibility, ineligibility, or expiration of eligibility per WAC 388-825-100.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1070 What are my appeal rights ((~~to a department decision that I am not eligible to be a client of~~)) if found DDA ineligible? ((~~Your appeal rights to a department decision that you are not eligible to be a DDA client because you do not meet the requirements for a developmental disability as outlined in chapter 388-823 WAC~~)) If found DDA ineligible due to not meeting requirements under this chapter, your appeal rights are limited to those described in WAC 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1080 If found DDA ((~~decides that I do not meet the requirements for eligibility~~)) ineligible, can I reapply ((~~for another decision~~))? If DDA decides that you do not meet the requirements for eligibility, ((~~as defined in this chapter,~~)) DDA will ((~~only~~)) accept a new application if:

(1) ((~~Your eligibility~~)) Eligibility was terminated because DDA could not locate you and you have ((~~subsequently~~)) since contacted DDA;

(2) ((~~Your eligibility~~)) Eligibility was terminated because you ((~~lost residency in the state of~~)) were not a Washington ((~~and you~~)) state resident but have since reestablished residency;

(3) DDA eligibility requirements have changed since your most recent eligibility determination;

(4) ((~~You have~~)) There is additional or new diagnostic or relevant testing information ((~~relevant to the determination~~)) that DDA did not previously review ((~~for the previous determination of eligibility~~)). DDA will accept an adaptive skills test result as new information if it reflects adaptive functioning due to your developmental disability.

((~~(a) The only acceptable new information considered is diagnostic information, FSIQ tests, or adaptive skills tests.

(b) DDA will only accept adaptive skills tests as new information if you provide evidence that your prior scores were invalid or if you provide evidence of a loss of functioning related to your qualifying condition.

(c) DDA will not administer an ICAP if you have a previous, valid ICAP or adaptive skills test score that is current within the past thirty-six months.~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-823-0720	What evidence do I need of my FSIQ?
WAC 388-823-0730	If I have more than one FSIQ score, what criteria will DDA use to select the FSIQ for determining eligibility?
WAC 388-823-0770	What evidence do I need of developmental delays?
WAC 388-823-0940	What happens if DDA or a designee contracted with DDA cannot identify a qualified respondent?
WAC 388-823-1000	Once I become an eligible DDA client, is there a time limit to my eligibility?
WAC 388-823-1030	How will I know that my eligibility is expiring or is due for review?
WAC 388-823-1090	If I am already eligible, how do these new rules affect me?
WAC 388-823-1100	How do I complain to DDA about my services or treatment?

WSR 24-14-005
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed June 21, 2024, 7:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-006.

Title of Rule and Other Identifying Information: Amending WAC 192-140-035 What happens if I do not respond to a request for information?

Hearing Location(s): On August 15, 2024, at 10:00 a.m., Zoom https://esd-wa-gov.zoom.us/j/89485884233?pwd=VlQ9rBuDpkiOfV-golNv6LmaDdrCnri.1, Meeting ID 894 8588 4233, Passcode 689782; or One-tap mobile +12532158782,,89485884233#,,,,*689782# US (Tacoma), +12532050468,,89485884233#,,,,*689782# US.

Date of Intended Adoption: August 16, 2024.

Submit Written Comments to: Lawrence Larson, P.O. Box 9046, Olympia, WA 98507-9046, email esdgpuirules@esd.wa.gov, fax 844-652-7096, by August 15, 2024.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email Teresa.eckstein@esd.wa.gov, by August 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, WAC 192-140-035 is internally inconsistent because it sets forth a presumption of disqualification if a claimant fails to respond to a request for information. The rule then speaks of denial of benefits under RCW 50.20.010. RCW 50.20.010 is not a disqualification statute; it is a statute that sets out a claimant's eligibility requirements for unemployment benefits. Eligibility for benefits under RCW 50.20.010 is a determination related to filing a weekly claim, while disqualification from receiving benefits is for a specific period of time.

Reasons Supporting Proposal: Currently, WAC 192-140-035 is internally inconsistent because it sets forth a presumption of disqualification if a claimant fails to respond to a request for information. The rule then states that if a claimant fails to respond to a request for specific information, the employment security department (department) will deny unemployment benefits under RCW 50.20.010. RCW 50.20.010 is not a disqualification statute; it is a statute that sets out a claimant's eligibility requirements for unemployment benefits. Eligibility for benefits under RCW 50.20.010 is a determination related to filng a weekly claim, while disqualification from receiving benefits is for a specific period of time. Therefore, this rule making is needed to make WAC 192-140-035 consistent.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010, 50.20.050, 50.20.060, 50.20.066, 50.20.070, 50.20.080, 50.20.090, 50.20.095.

Statute Being Implemented: RCW 50.20.010.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Lawrence Larson, Olympia, Washington, 360-890-3460; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 360-463-1079.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lawrence Larson, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3460, fax 844-652-7096, TTY relay 771 [711], email esdgpuirules@esd.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The rule addresses how the department interacts with a claimant under certain situations. This rule making and WAC 192-140-035 do not place an obligation on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

June 21, 2024
Joy Adams
Employment Security Policy Director

OTS-5413.1

AMENDATORY SECTION (Amending WSR 23-19-006, filed 9/6/23, effective 10/7/23)

WAC 192-140-035 What happens if I do not respond to a request for information? (1) The department will presume that you are disqualified from or ineligible for benefits if you provide information indicating you are potentially ((~~disqualifying information~~)) disqualified from or ineligible for benefits, or fail to provide necessary information((~~,~~)) and ((~~then~~)) do not respond to a request for specific information. The department will deny benefits ((~~under RCW 50.20.010~~)) based on this presumption.

(2) This denial is for an indefinite period of time and will continue until either:

(a) You provide the requested information;

(b) You qualify and are eligible for a new, separate unemployment claim and the information requested under subsection (1) of this section is not relevant for your new claim; or

(c) The request for information was made pursuant to a quality control review under 20 C.F.R. § 602.11 and your response is no longer needed for the quality control review.

(3) Once you provide the requested information, the department may issue a redetermination under RCW 50.20.160. The department will issue a new decision allowing benefits if you provide enough information to establish your qualification and eligibility for benefits.

WSR 24-14-013
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed June 21, 2024, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-047.

Title of Rule and Other Identifying Information: WAC 182-543-3300 Covered—Osteogenesis electrical stimulator (bone growth stimulator).

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning June 25, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-543-3300 to update medical necessity criteria based on evidence review(s).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Dani Crawford, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-0983.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule proposal updates the criteria under which the medicaid agency pays for a client's bone growth stimulator. This rule proposal does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

June 24, 2024
Wendy Barcus
Rules Coordinator

OTS-5427.1

AMENDATORY SECTION (Amending WSR 14-08-035, filed 3/25/14, effective 4/25/14)

WAC 182-543-3300 Covered—Osteogenesis electrical stimulator (bone growth stimulator)—Noninvasive. (1) The medicaid agency covers, with prior authorization, noninvasive osteogenesis electrical stimulators, also known as bone growth stimulators, limited to one per client, in a five-year period.

(2) The agency pays for the purchase of nonspinal bone growth stimulators, only when:

(a) The stimulators have pulsed electromagnetic field (PEMF) ((~~simulation~~)) stimulation; and

(b) The client meets one or more of the following clinical criteria:

(i) Has a nonunion of a long bone fracture (which includes clavicle, humerus, phalanx, radius, ulna, femur, tibia, fibula, metacarpal and metatarsal) where three months have elapsed since the date of injury without healing; or

(ii) Has a failed fusion of a joint, other than in the spine, where a minimum of nine months has elapsed since the last surgery; or

(iii) Diagnosed with congenital pseudarthrosis.

(3) The agency pays for the purchase of spinal bone growth stimulators, when:

(a) Prescribed by a neurologist, an orthopedic surgeon, or a neurosurgeon; and

(b) The client meets one or more of the following clinical criteria:

(i) Has a failed spinal fusion where a minimum of nine months ((~~have~~)) has elapsed since the last surgery; or

(ii) Is post-op from a multilevel spinal fusion surgery; or

(iii) Is post-op from spinal fusion surgery and there is a history of a previously failed spinal fusion.

(4) The agency pays for the purchase of ultrasonic noninvasive bone growth stimulators when:

(a) Prescribed by a neurologist, an orthopedic surgeon, or a neurosurgeon; and

(b) The client meets all the following clinical criteria:

(i) Nonunion confirmed by two radiographs minimum 90 days apart; and

(ii) Physician statement of no clinical evidence of fracture healing.

WSR 24-14-039
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed June 26, 2024, 7:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-006.

Title of Rule and Other Identifying Information: WAC 182-543-1000 Medical equipment, supplies, and appliances—Definitions.

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning June 27, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to update medical equipment, supplies, and appliances definitions to better clarify billing and coverage.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504, 360-725-1344; Implementation and Enforcement: Dani Crawford, P.O. Box 42716, Olympia, WA 98504, 360-725-0983.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The rule making is definition additions and corrections. Does not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

June 26, 2024
Wendy Barcus
Rules Coordinator

OTS-5384.1

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-1000 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter.

"By-report (BR)" - See WAC 182-500-0015.

"Complex needs patient" - An individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities.

"Complex rehabilitation technology (CRT)" - Wheelchairs and seating systems classified as durable medical equipment within the medicare program that:

(a) Are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities as medically necessary to prevent hospitalization or institutionalization of a complex needs patient;

(b) Are primarily used to serve a medical purpose and generally not useful to a person in the absence of an illness or injury; and

(c) Require certain services necessary to allow for appropriate design, configuration, and use of such item, including patient evaluation and equipment fitting.

"Date of delivery" - The date the client actually took physical possession of an item or equipment.

"Digitized speech" (also referred to as devices with whole message speech output) - Words or phrases that have been recorded by an individual other than the speech generating device (SGD) user for playback upon command of the SGD user.

"Disposable supplies" - Supplies which ((~~may be used once, or more than once, but are time limited~~)) are designed as single-use products to be discarded after initial use.

"EPSDT" - See WAC 182-500-0030.

"Expedited prior authorization (EPA)" - See WAC 182-500-0030.

"Fee-for-service (FFS)" - See WAC 182-500-0035.

"Health care common procedure coding system (HCPCS)" - A coding system established by the Health Care Financing Administration (HCFA) to define services and procedures. HCFA is now known as the Centers for Medicare and Medicaid Services (CMS).

"Home" - For the purposes of this chapter, means location, other than hospital or skilled nursing facility where the client resides and receives care.

"House wheelchair" - A skilled nursing facility wheelchair that is included in the skilled nursing facility's per-patient-day rate under chapter 74.46 RCW.

"Individually configured" - A device has a combination of features, adjustments, or modifications specific to a complex needs patient that a qualified complex rehabilitation technology supplier provides by measuring, fitting, programming, adjusting, or adapting the device as appropriate so that the device is consistent with an assessment or evaluation of the complex needs patient by a health care professional and consistent with the complex needs patient's medical condition, physical and functional needs and capacities, body size, period of need, and intended use.

"Manual wheelchair" - See "Wheelchair - Manual."

"Medical equipment" - Includes medical equipment and appliances, and medical supplies.

"Medical equipment and appliances" - Health care-related items that:

(a) Are primarily and customarily used to serve a medical purpose;

(b) Generally, are not useful to a person in the absence of a disability, illness, or injury;

(c) Can withstand repeated use;

(d) Can be reusable or removable; and

(e) Are suitable for use in any setting where normal life activities take place.

"Medical supplies" - Health care-related items that are:

(a) Consumable or disposable or cannot withstand repeated use by more than one person;

(b) Required to address an individual medical disability, illness, or injury;

(c) Suitable for use in any setting which is not a medical institution and in which normal life activities take place; and

(d) Generally not useful to a person in the absence of illness or injury.

"Medically necessary" - See WAC 182-500-0070.

"National provider indicator (NPI)" - See WAC 182-500-0075.

"Orthotic device" or **"orthotic"** - A corrective or supportive device that:

(a) Prevents or corrects physical deformity or malfunction; or

(b) Supports a weak or deformed portion of the body.

"Power-drive wheelchair" - See "Wheelchair - Power."

"Pricing cluster" - A group of manufacturers' list prices for brands/models of medical equipment that the agency considers when calculating the reimbursement rate for a procedure code that does not have a fee established by medicare.

"Prior authorization" - See WAC 182-500-0085.

"Prosthetic device" or **"prosthetic"** - See WAC 182-500-0085.

"Qualified complex rehabilitation technology supplier" - A company or entity that:

(a) Is accredited by a recognized accrediting organization as a supplier of CRT;

(b) Meets the supplier and quality standards established for durable medical equipment suppliers under the medicare program;

(c) For each site that it operates, employs at least one CRT professional, certified by the rehabilitation engineering and assistive technology society of North America as an assistive technology professional, to analyze the needs and capacities of clients, and provide training in the use of the selected covered CRT items;

(d) Has the CRT professional physically present for the evaluation and determination of the appropriate individually configured CRT for the complex needs patient;

(e) Provides service and repairs by qualified technicians for all CRT products it sells; and

(f) Provides written information to the complex needs patient at the time of delivery about how the individual may receive service and repair of the delivered CRT.

"Resource-based relative value scale (RBRVS)" - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"Reusable supplies" - Supplies which are ((~~to be used more than once~~)) designed and intended for repeated use.

"Safety enclosure frame/canopy" - A passive bed enclosure that provides a solid framework and a soft canopy structure, which securely attaches to the bed. The enclosure provides access to the client through openings, allowing the caregiver the ability to provide routine care to the client. It is an integral part of, or accessory to, a hospital bed.

"Scooter" - A federally approved, motor-powered vehicle that:

(a) Has a seat on a long platform;

(b) Moves on either three or four wheels;

(c) Is controlled by a steering handle; and

(d) Can be independently driven by a client.

"Specialty bed" - A hospital bed used primarily in the treatment of individuals with a disability, illness, or injury, that has a pressure reducing or relieving support surface, or both, such as foam, air, water, or gel mattress or overlay.

"Speech generating device (SGD)" - An electronic device or system that compensates for the loss or impairment of a speech function due to a congenital condition, an acquired disability, or a progressive neurological disease. The term includes only that equipment used for the purpose of communication. Formerly known as "augmentative communication device (ACD)."

"Synthesized speech" - Is a technology that translates a user's input into device-generated speech using algorithms representing linguistic rules, unlike prerecorded messages of digitized speech. A SGD that has synthesized speech is not limited to prerecorded messages but rather can independently create messages as communication needs dictate.

"Three- or four-wheeled scooter" - A three- or four-wheeled vehicle meeting the definition of scooter (see "scooter") and which has the following minimum features:

(a) Rear drive;

(b) A ((~~twenty-four~~)) 24 volt system;

(c) Electronic or dynamic braking;

(d) A high to low speed setting; and

(e) Tires designed for indoor/outdoor use.

"Trendelenburg position" - A position in which the patient is lying on his or her back on a plane inclined ((~~thirty to forty~~)) 30 to 40 degrees. This position makes the pelvis higher than the head, with the knees flexed and the legs and feet hanging down over the edge of the plane.

"Usual and customary charge" - See WAC 182-500-0110.

"Warranty-period" - A guarantee or assurance, according to manufacturers' or provider's guidelines, of set duration from the date of purchase.

"Wheelchair - Manual" - A federally approved, nonmotorized wheelchair that is capable of being independently propelled and fits one of the following categories:

(a) Standard:

(i) Usually is not capable of being modified;

(ii) Accommodates a person weighing up to ((~~two hundred fifty~~)) 250 pounds; and

(iii) Has a warranty period of at least one year.

(b) Lightweight:

(i) Composed of lightweight materials;

(ii) Capable of being modified;

(iii) Accommodates a person weighing up to ((~~two hundred fifty~~)) 250 pounds; and

(iv) Usually has a warranty period of at least three years.

(c) High-strength lightweight:

(i) Is usually made of a composite material;

(ii) Is capable of being modified;

(iii) Accommodates a person weighing up to ((~~two hundred fifty~~)) 250 pounds;

(iv) Has an extended warranty period of over three years; and

(v) Accommodates the very active person.

(d) Hemi:

(i) Has a seat-to-floor height lower than ((~~eighteen~~)) 18 inches to enable an adult to propel the wheelchair with one or both feet; and

(ii) Is identified by its manufacturer as "Hemi" type with specific model numbers that include the "Hemi" description.

(e) Pediatric: Has a narrower seat and shorter depth more suited to pediatric patients, usually adaptable to modifications for a growing child.

(f) Recliner: Has an adjustable, reclining back to facilitate weight shifts and provide support to the upper body and head.

(g) Tilt-in-space: Has a positioning system, which allows both the seat and back to tilt to a specified angle to reduce shear or allow for unassisted pressure releases.

(h) Heavy duty:

(i) Specifically manufactured to support a person weighing up to ((~~three hundred~~)) 300 pounds; or

(ii) Accommodating a seat width of up to ((~~twenty-two~~)) 22 inches wide (not to be confused with custom manufactured wheelchairs).

(i) Rigid: Is of ultra-lightweight material with a rigid (nonfolding) frame.

(j) Custom heavy duty:

(i) Specifically manufactured to support a person weighing over ((~~three hundred~~)) 300 pounds; or

(ii) Accommodates a seat width of over ((~~twenty-two~~)) 22 inches wide (not to be confused with custom manufactured wheelchairs).

(k) Custom manufactured specially built:

(i) Ordered for a specific client from custom measurements; and

(ii) Is assembled primarily at the manufacturer's factory.

"Wheelchair - Power" - A federally approved, motorized wheelchair that can be independently driven by a client and fits one of the following categories:

(a) Custom power adaptable to:

(i) Alternative driving controls; and

(ii) Power recline and tilt-in-space systems.

(b) Noncustom power: Does not need special positioning or controls and has a standard frame.

(c) Pediatric: Has a narrower seat and shorter depth that is more suited to pediatric patients. Pediatric wheelchairs are usually adaptable to modifications for a growing child.

WSR 24-14-057
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 23-01—Filed June 27, 2024, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-026.

Title of Rule and Other Identifying Information: Chapter 173-441 WAC, Reporting of emissions of greenhouse gases rule; and chapter 173-446 WAC, Climate Commitment Act program rule, electricity markets rule making.

For more information on this rule making, please visit https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-441-446.

Hearing Location(s): On August 6, 2024, at 1:00 p.m. Hearing via webinar. Join online and see instructions https://waecy-wa-gov.zoom.us/meeting/register/tZAkdeCrqTgiH9WgLsdLU9TAdqV-5Z5bcddJ. Presentation and question and answer session followed by the hearing. This is an online meeting that you can attend from any computer using internet access; and

On August 8, 2024, at 9:00 a.m. Hearing via webinar. Join online and see instructions https://waecy-wa-gov.zoom.us/meeting/register/tZIsduypqzgiEtPFx2hAdGWb5y0eUSL6Pcv-]. Presentation and question and answer session followed by the hearing. This is an online meeting that you can attend from any computer using internet access.

Date of Intended Adoption: December 3, 2024.

Submit Written Comments to: Gopika Patwa, Department of Ecology, Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600; or Department of Ecology, Climate Pollution Reduction Program, 300 Desmond Drive S.E., Lacey, WA 98503, email gopika.patwa@ecy.wa.gov, https://aq.ecology.commentinput.com?id=ijhB5kQRH, beginning June 27, 2024, 12:00 a.m., by August 20, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, speech disability may call TTY at 877-833-6341, impaired hearing may call Washington relay service at 711, email ecyADAcoordinator@ecy.wa.gov, by August 2, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2021, the Washington legislature passed the Climate Commitment Act (CCA), which established a cap-and-invest program to help Washington meet statutory greenhouse gas (GHG) emission limits.

To align with the requirements of the CCA, this rule making is proposing amendments to chapter 173-441 WAC, Reporting of emissions of greenhouse gases; and chapter 173-446 WAC, Climate Commitment Act program rule.

The purpose of these updates is to help determine which electricity importers from centralized electricity markets should be covered under the cap-and-invest program. This rule does not modify the eligibility criteria for inclusion under the cap-and-invest program. The rule establishes a framework that identifies the resources supplying the relevant electricity into centralized electricity markets based on the market mechanisms that operators of these markets put in place. The resulting compliance obligation is assigned in the CCA program rule (chapter 173-446 WAC), with the processes and procedures for identifying resources contained with the reporting of emissions of GHG

rule (chapter 173-441 WAC). Supporting changes to the reporting rule will also ensure that appropriate data are available.

The proposal applies to existing and future centralized electricity markets including the Energy Imbalance Market, the Extended Day Ahead Market, and the Markets+ initiative underway by the Southwest Power Pool. The proposal also addresses other issues related to the reporting of GHG emissions for entities importing electricity to Washington.

Specifically, this rule making proposes to provide:

- A framework for addressing imports of electricity from specified resources through centralized electricity markets.
- A process for identifying the electricity importer for imported electricity from centralized electricity markets.
- Methods for assigning GHG emissions to imports of electricity from centralized electricity markets.
- Equitable treatment across and between bilateral and centralized electricity markets.
- Nonsubstantive administrative and process-related changes for clarity and to harmonize the rule with recent statutory changes.

Reasons Supporting Proposal: This rule making is required by RCW 70A.65.080 (1)(c). The rule making is necessary to ensure that specified sources of electricity imported into the state from centralized electricity markets can be identified and counted as covered emissions in the cap-and-invest program. Currently, there is a lack of clear methodologies and procedures to assign the compliance obligations on the importing entity. Additionally, this rule making will allow centralized electricity market operators to put in place the necessary data infrastructure to track importing entities and report that information to the department of ecology (ecology).

Statutory Authority for Adoption: RCW 70A.65.080 (1)(c).

Statute Being Implemented: Greenhouse gas emissions—Cap and invest program, program coverage, RCW 70A.65.080 (1)(c); Greenhouse Gas emissions—Cap and invest program, adoption of rules, RCW 70A.65.220; Washington Clean Air Act, Classification of air contaminant sources—Registration—Fee—Registration program defined—Adoption of rules requiring persons to report emissions of greenhouse gases, RCW 70A.15.2200(5).

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Gopika Patwa, Lacey, 360-338-2419; Implementation and Enforcement: Lindsey Kennelly, Lacey, 360-584-7426.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gopika Patwa, Department of Ecology, Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-338-2419, speech disability may call TTY at 877-833-6341, impaired hearing may call Washington relay service at 711, email gopika.patwa@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify

language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA; chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment; the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this analysis, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this analysis. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated Preliminary Regulatory Analyses document (PRA; **ecology publication no. 24-14-052, June 2024**). We have retained the section numbering, table numbers, and chapter references from the PRA for easier cross-referencing.

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: The baseline for our analyses generally consists of existing laws and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- The CCA law, chapter 70A.65 RCW (Greenhouse gas emissions—Cap and invest program).
- Section 2200 of the Washington Clean Air Act, RCW 70A.15.2200 (Classification of air contaminant sources—Registration—Fee—

Registration program defined—Adoption of rules requiring persons to report emissions of greenhouse gases).
- The existing GHG reporting rule, chapter 173-441 WAC (Reporting of emissions of greenhouse gases).
- The existing CCA rule, chapter 173-446 WAC (Climate Commitment Act program rule).
- E2SSB 6058, section 11, chapter 352, Laws of 2024 (Carbon market linkage—California—Québec carbon market).
- Chapter 19.405 RCW (Washington Clean Energy Transformation Act; CETA).
- California Air Resources Board (CARB) Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Title 17 California Code of Regulations (CCR), Div. 3, Ch. 1, Subchapter 10, Article 2).
- CARB California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Title 17 CCR, Div. 3, Ch. 1, Subchapter 10, Article 5).
- The Federal Power Act (16 U.S.C. Ch. 12).
- Federal Energy Regulatory Commission (FERC) regulation and approval of market tariffs.

2.3 Proposed rule amendments:
The proposed rule amendments would:

- Amend reporting requirements in the GHG reporting rule (chapter 173-441 WAC):
  - Amending the definition of "electric power entity" (EPE).
  - Changing annual report submission requirements.
  - Adding, removing, or changing definitions specific to EPE reporting requirements.
  - Expanding data requirements and calculation methods from the EIM to all centralized electricity markets (CEMs).
  - Specifying how EPEs must report imported CEM electricity.
  - Specifying GHG emissions equations and applicability.
  - Expanding documentation requirements.
  - Amending requirements for registration of import or export sources.
  - Making changes without material impacts:
    - Clarify language and update terminology.
    - Remove obsolete requirements and language.
- Amend the CCA rule (chapter 173-446 WAC):
  - Adding definitions consistent with the GHG reporting rule.
  - Amending covered emissions to reflect electricity imported from CEMs.

2.3.1 Amending the definition of EPE (chapter 173-441 WAC): The proposed rule amendments would expand the definition of EPE to include entities that transact electric power in Washington. This proposed amendment would extend reporting requirements to electricity importers and exporters, retail providers, and asset controlling suppliers that transact electric power in the state. This would result in reporting costs for entities that transact power in Washington but are not suppliers, and benefits of comprehensive GHG emissions data collection related to electricity transactions in the state if that data is not being collected under the baseline.

Definitions do not, in and of themselves, have impact beyond how the defined terms are used in the rule. Where definitions inform the coverage, scope, or type(s) of impacts under the proposed rule amend-

ments, associated costs and benefits associated with those sections of the rule below include the relevant baseline and proposed definitions.

2.3.2 Changing annual report submission requirements (chapter 173-441 WAC): The proposed rule amendments would require each EPE to submit a single annual report by June 1 of each year.

This proposed amendment would reduce reporting costs for EPEs by not requiring a preliminary report by March 31 of each year. Ecology believes that a single annual report is sufficient to provide necessary GHG emissions reporting data to meet program needs. This would also be consistent with similar requirements for EPE reporting in other jurisdictions.

2.3.3 Adding, removing, or changing definitions specific to EPE reporting requirements (chapter 173-441 WAC): The proposed rule amendments would add, remove, or change various definitions specific to EPEs:

- The proposed amendments would add definitions of:
  - "Centralized electricity market" (CEM)
  - "Deemed market importer"
  - "Market operator"
  - "Market participant"
  - "Markets+"
  - "Surplus electricity"
- The proposed amendments would remove definitions of:
  - "First jurisdictional deliverer" (FJD).
  - "Generation providing entity" (GPE).
- The proposed amendments would amend definitions of:
  - "Direct delivery of electricity"
  - "Electricity importer"
  - "Electricity transaction"
  - "Exported electricity"
  - "Imported electricity"
  - "Power contract"
  - "Specified source"

Definitions do not, in and of themselves, have impact beyond how the defined terms are used in the rule. Where definitions inform the coverage, scope, or type(s) of impacts under the proposed rule amendments, associated costs and benefits associated with those sections of the rule below include the relevant baseline and proposed definitions.

2.3.4 Expanding data requirements and calculation methods from the EIM to all CEMs (chapter 173-441 WAC): The proposed rule amendments would replace the EIM with CEMs.

This proposed rule amendment would result in expansion of the types of CEMs the GHG reporting rule applies to. This would, in turn, contribute to costs associated with reporting emissions from electricity from these markets, as well as benefits of supporting centralized market functions, efficiencies, and use in Washington.

2.3.5 Specifying how EPEs must report imported CEM electricity (chapter 173-441 WAC): The proposed rule amendments would:

- Require reporting entities to report electricity from CEMs:
  - For the EIM, for 2023-2026, retail providers receiving electricity facilitated through the EIM are the electricity importers. If the market operator identifies deemed market importers that offer energy attributed to Washington before 2026, those are the deemed market importers beginning in the following year.

  - Each deemed market importer must separately report electricity assigned, designated, deemed, or attributed to Washington by an originating CEM.
  - Each deemed market importer must annually calculate, report, and verify GHG emissions for the electricity they offered that was designated, deemed, or attributed to Washington.
- Add a requirement that for electricity dispatched by a CEM, EPEs must report specified electricity sales attributed to market participants outside Washington or exported from the market to entities outside Washington, for unspecified and specified sources disaggregated by the recipient.
- Add a requirement that retail providers must report net purchases from CEMs based on annual total purchases from each separate market.
- In the baseline specification that reporting includes retail sales from the EIM, replace the EIM with each CEM.
- In the application and maintenance requirements for asset-controlling suppliers, replace first jurisdictional deliverers with deemed market importers.

This proposed rule amendment would contribute to overall reporting costs, as well as costs associated with designation of importers and attribution of electricity. It would also contribute to benefits of:

- Accurate identification of electricity imports from centralized markets and who is importing that power.
- Participation and development of CEMs.
- Data collection supporting the state's statutory goals related to GHG emissions tracking, planning, and reductions.

Based specifically on proposed rule language related to regulatory timing and transition, Washington energy imbalance market (EIM) importers would not be considered deemed market importers for reporting years 2023-2026. Since only deemed market importers would be required to report emissions associated with specified power CEM imports, this means these reporting costs and benefits would not occur until the 2027 reporting year. Similarly, these costs and benefits would not occur for imports from future CEMs such as extended day ahead market (EDAM) and Markets+ until they launch operations (currently expected in May 2026 and in 2027, respectively). We therefore assume reporting costs and benefits would not occur until reporting year 2027.

2.3.6 Expanding documentation requirements (chapter 173-441 WAC): The proposed rule amendments would add documentation requirements for any other reports provided by the market operator to the EPE documenting electricity attributed to Washington for which that EPE is the deemed market importer.

This proposed rule amendment would result in minor costs of retaining additional documents, as well as benefits of maintaining verifiable records underlying GHG emissions reporting.

2.3.7 Specifying GHG emissions equations and applicability (chapter 173-441 WAC): The proposed rule amendments would remove reference to WAC 173-444-040(4), and replace it with a numerically equivalent equation in which emissions are the product of the number of MWh, an unspecified emissions factor, and a transmission loss multiplier. The unspecified emissions factor would be 0.428 MT CO_2e/MWh, and the transmission loss multiplier would be 1.02. The simplified equation

would therefore be MWh multiplied by 0.437, equivalent to the baseline equation.

The proposed rule would also specify that the equation for specified electricity emissions also applies to specified electricity deemed, designated, assigned, or attributed by a CEM.

We do not expect this proposed rule amendment to result in costs or benefits, beyond clarity in which equation must be used facilitating compliance. This is because the newly proposed equation is numerically equivalent to the baseline equation in chapter 173-444 WAC.

2.3.8 Amending requirements for registration of import or export sources (chapter 173-441 WAC): Under the proposed rule amendments, deemed market importers would be included in the types of specified facilities or units required to register their anticipated specified sources, by a registration deadline of February 1st of each year.

The amendments would also add required information to be provided for registration, and specify that EPEs must be able to demonstrate that the market operator designated, assigned, deemed, or attributed the energy from those sources to Washington.

Finally, the amended rule would require EPEs to provide settlement records or other documentation requested by ecology by May 1st of each year.

These proposed rule amendments are likely to result in additional or expanded reporting costs. They would also contribute to benefits of:

- Accurate identification of electricity imports from centralized markets and who is importing that power.
- Participation and development of CEMs.
- Data collection supporting the state's statutory goals related to GHG emissions tracking, planning, and reductions.

2.3.9 Making changes without material impacts (chapter 173-441 WAC): The proposed rule amendments would clarify that point of receipt and point of delivery reports must use an e-tag code only where applicable. They would also delete the requirement to report when unspecified power came from the EIM.

These proposed amendments are not likely to result in costs or benefits as compared to the baseline, beyond clarity. Since e-tag codes are not applicable to all power transactions, the clarification that they must be used only when applicable would reduce confusion for covered entities. Under the collective proposed rule amendments, the requirement to report unspecified power from the EIM would become obsolete, and so its removal would not have material impact given the other proposed amendments would collect necessary information about specified imports from CEMs.

2.3.10 Adding definitions consistent with the GHG reporting rule (chapter 173-446 WAC): This proposed rule amendment would add definitions to the CCA rule, to make it consistent with proposed amendments to the GHG reporting rule. It would define the following by explicit reference to the reporting rule:

- CEM.
- Deemed market importer.

These proposed amendments would facilitate consistency between terms in the CCA rule and GHG reporting rule. Definitions do not, in and of themselves, have impact beyond how the defined terms are used in the rule. Where definitions inform the coverage, scope, or type(s) of impacts under the proposed rule amendments, costs and benefits as-

sociated with those sections of the rule below include the relevant baseline and proposed definitions.

2.3.11 Amending covered emissions to reflect electricity imported from CEMs (chapter 173-446 WAC): Compliance obligations: The baseline CCA rule defines emissions that are covered under the cap-and-invest program, beginning with reported emissions under the GHG reporting rule, and modifying those reported emissions to only those that are not exempt and are covered by the program. This includes allotment provisions to avoid double-counting emissions or counting emissions the rule does not apply to.

As part of those provisions, the CCA rule specifically states that it, "provides details on allotment for covered emissions that are potentially attributable to multiple parties and provides direction for allotment when such emissions may be reported by multiple facilities, suppliers, or first jurisdictional deliverers of electricity." It also notes that it only describes the process for determining which covered or opt-in entity is responsible for a given metric ton of covered emissions after exemptions are accounted for, and does not expand the definition of covered emissions itself.

The subsection relevant to this rule making defines the allotment of covered emissions for first jurisdictional deliverers of imported electricity:

- Emissions from imported electricity are covered for the first jurisdictional deliverer that is importing electricity.
- If the importer is a federal power marketing administration that is not voluntarily complying with the cap-and-invest program, the importer is the next purchaser-seller on the e-tag. Otherwise, the utility receiving the electricity is the importer.
- If the importer is a federal power marketing administrations that is voluntarily participating in the cap-and-invest program, then the utilities buying from it may provide (by agreement) that the federal power marketing administration is assuming the compliance obligation for emissions from the imported electricity.
- For the first compliance period (2023-2026), the importer for electricity from the EIM is the purchaser in Washington that receives it. If the first jurisdictional deliverer generates and has a compliance obligation for the electricity that is transferred through the EIM, and that electricity is then delivered into Washington, there is no second compliance obligation for it.

The baseline CCA rule also specifies that ecology may adjust covered emissions based on new reported information, new assigned emissions levels, or to compensate for changes in methodology.

Allocation of no-cost allowances: In section 230, the baseline CCA rule also defines how no-cost allowances are distributed to electric utilities under the cap-and-invest program. Allowances are a form of compliance instrument that can be used to satisfy compliance obligations for GHG emissions. Utilities subject to the Washington Clean Energy Transformation Act (CETA; chapter 19.405 RCW) are eligible to receive no-cost allowances to use for compliance, monetize by consigning them to the allowance market, or bank for future use. By allocating no-cost allowances to electric utilities, the CCA program helps them mitigate the impacts of the following on retail electricity prices and ratepayers:

- Utility compliance obligations.

- Increased wholesale electricity prices passed on to utilities by generators, marketers, or importers that have compliance obligations.

Allocations are based on the "cost burden effect." This effect is calculated by multiplying the electricity load from each type of source by the emissions factor for that source, and then adding up those emissions across all types of sources.

The CCA rule states that initial allocations will be adjusted as necessary to account for the difference between applicable reported emissions for prior years and the number of no-cost allowances allocated. Allocations may also be adjusted based on updated forecasts.

Proposed: The proposed rule amendments include the following changes to the baseline covered emissions discussed above, to allocate covered emissions (and resulting compliance obligations) for electricity imported from CEMs:

- Importers are identified using the GHG reporting rule.
- If the importer is a federal power marketing administration, it may voluntarily comply for either all sales into Washington or for attributions to Washington in a CEM for which it is a deemed market importer. In this case, the federal power marketing administration takes on the associated compliance obligation.
- Requirements related to EIM power during the first compliance period are deleted.
- The compliance obligation is only determined once for electricity from an electric generating facility in Washington that is sold into a CEM, and is then assigned, designated, deemed, or attributed back into Washington by that market.

These proposed amendments, in combination with proposed amendments to the GHG reporting rule, would establish compliance obligations for emissions associated with specified sources of electricity imported through CEMs. Ecology would assign these obligations to those entities identified as CEM importers, distributing compliance obligations in line with actual importing behavior of each EPE. This would result in compliance costs for those entities facing new compliance obligations associated with CEM imports.

Since new information also influences the cost burden effect that ecology uses to allocate no-cost allowances to electric utilities, we also expect these proposed amendments to result in additional allocation of no-cost allowances to match the aggregate increase in compliance obligations. Additional no-cost allowances would be a benefit to those receiving them, as they can choose to:

- Use (retire) the allowances to meet compliance obligations.
- Consign the allowances to the allowance market, to receive money for them based on the market's settlement price. This allows utilities to offset compliance costs incurred by importers further up their electricity supply chain.
- Bank the allowances for future use, including potential retirement or consignment in future years.

Whereas we expect these costs and benefits to be the same in the aggregate over time, it is possible for there to be transitional periods during which they are not. This is because of current uncertainty about the process that will be used to update forecasts and adjust no-cost allowance allocations. Depending on how no-cost allowance adjustments are made and how they occur over time as new information becomes

available, there may be periods during which there are differences between the numbers of new compliance obligations and new no-cost allowances. Each of these circumstances has its own net costs and benefits, depending on whether new demand for allowances (from compliance obligations) is less than or greater than new supply (from no-cost allowance allocations).

Based specifically on proposed rule language related to regulatory timing and transition, EIM importers would not be considered deemed market importers for reporting years 2023-2026. Since only deemed market importers would be required to report emissions associated with specified power CEM imports, this means the above costs and benefits associated with new compliance obligations and new no-cost allowance allocations would not occur until the 2027 reporting year. Similarly, these costs and benefits would not occur for imports from future CEMs such as EDAM and Markets+ until after they launch operations (currently expected in May 2026 and in 2027, respectively). We therefore assume these costs and benefits would not occur until reporting year 2027.

COSTS OF COMPLIANCE: EQUIPMENT, SUPPLIES, PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment, supplies, or professional services.

COSTS OF COMPLIANCE: LABOR, ADMINISTRATIVE, AND OTHER: **3.2.1.2 Electricity importer compliance:** To estimate the costs electricity importers would face under the proposed rule, as compared to the baseline, we considered the number of current and potential future importers. We then applied a range of estimated costs to different types of importers, based on whether they currently report EIM imports, currently report emissions (as they emit more than the reporting threshold of 10,000 MT CO_2e), or don't currently report (emit below the threshold).

Total estimated annual costs ranged from $14,124 to $26,786, depending on the number of CEM energy importers reporting in a given year, and whether it is their first year of reporting imports from CEMs. When considering flows of costs over time, ecology calculates the present value of costs. A present value discounts future dollar values into current dollars, accounting for both inflation and the opportunity cost of having funds later instead of now. We estimated the 20-year present value cost of additional reporting effort as approximately $368,000 over 20 years. This is equivalent to an average annual present value cost of $17,527 over the next 20 years.

3.2.2 Costs: New obligations and allocations: To estimate costs associated with new compliance obligations established and assigned under the proposed rule amendments, we considered current imports, potential growth trajectories over time, and potential allowance price profiles.

Multiplying allowance prices by the range of estimated GHG emissions associated with electricity imports from CEMs, we estimated total annual costs (aggregated across all CEM importers) of between $7 million and $119 million. Total costs increase as a larger proportion of GHG emissions is assumed to come from CEM imports, and fall as the decrease in total GHG emissions outweighs CEM import growth.

When considering flows of costs over time, ecology calculates the present value of costs. A present value discounts future dollar values into current dollars, accounting for both inflation and the opportunity cost of having funds later instead of now. We estimated the 20-year present value cost of new compliance obligations as between $497 mil-

lion and $1.2 billion over 20 years, with the first year of costs occurring in 2027.

COST-SAVINGS: **4.2.2 Benefits:** New obligations and allocations CEM import data and associated GHG emissions identified under the proposed rule amendments would impact compliance obligations under the CCA program (see Section 3.2.2) but would also impact the allocation of no-cost allowances to CETA-covered retail utilities. These allocations are intended to mitigate the costs of CCA compliance obligations, whether their costs are incurred directly (by utilities) or indirectly and passed on in wholesale prices (by a generator or marketer that sells to a utility).

New data gathered under the proposed rule amendments would influence the cost burden effect that ecology uses to allocate no-cost allowances. As a result, we expect the proposed amendments to result in additional allocation of no-cost allowances to match the aggregate increase in compliance obligations. Additional no-cost allowances would be a benefit to those receiving them, as they can choose to:

- Use (retire) the allowances to meet compliance obligations.
- Consign the allowances to the allowance market, to receive payment for them based on the market's settlement price. This allows utilities to offset compliance costs incurred by importers further up their electricity supply chain.
- Bank the allowances for future use, including potential retirement or consignment in future years.

4.2.2.1 Value of additional no-cost allowances: Corresponding to our assumptions and estimated new compliance obligations in Section 3.2.2, we estimated annual increases in the allocation of no-cost allowances based on the cost burden effect equation (see Section 2.3.11 for detailed discussion of no-cost allowance allocation). Conceptually, these values are equal, and compliance obligations are offset by no-cost allowance allocations in the aggregate - this way, GHG emissions are accounted for in the CCA program while mitigating potential impacts to electricity ratepayers.

Multiplying allowance prices by the range of estimated new no-cost allowances allocated under the proposed rule, we estimated the total value of this benefit as between $7 million and $119 million in a given year over the next 20 years.

When considering flows of benefits over time, ecology calculates the present value of benefits. A present value discounts future dollar values into current dollars, accounting for both inflation and the opportunity cost of having funds later instead of now. We estimated the 20-year present value benefit of new no-cost allowance allocations as between $497 million and $1.2 billion over 20 years.

4.2.3 Benefits: Centralized electricity market function: It is not clear to what degree or how efficiently CEMs would be able to operate in Washington under the baseline. This is because of complex and uncertain factors such as baseline CCA law's requirements for covered emissions (including those from imported electricity, though ecology is tasked with adopting a rule that specifies the process for their inclusion), the lack of a specified mechanism to identify deemed market importers, and potential difficulties EPEs that participate in CEMs could have in demonstrating compliance with the law. This could create enforcement challenges and undermine the effectiveness of regulatory oversight and ecology's ability ensure the state meets statutory GHG emissions reduction goals.

Market operators may also:

- Incur higher transaction costs under the baseline, due to a need for additional risk management measures. These costs could then be passed on to consumers through higher electricity prices, without mitigation such as no-cost allowance allocations to utilities.
- Encounter difficulties ensuring fair competition or preventing electricity market manipulation, due to a lack of clear guidance. This could reduce CEM efficiency and raise costs.
- Be reluctant to invest in infrastructure upgrades or new technologies, which could create gaps in market coverage. Where coverage is possible, it could still be inefficient, and carry risks of grid instability, congestion, or failure due to lacking infrastructure.

As a result, the proposed specifications of CEM importer identification and compliance obligation responsibility support EPEs and consumers receiving the benefits of CEMs operating in Washington. These include:

- Cost-efficiency and cost-savings. For example, CEM participants were estimated to receive various benefits of cost savings:
  - During the 4th quarter of 2023, EIM participants attained nearly $400 million in cost-savings.
  - 2022 modeling of benefits of the EDAM estimated that the West could save over $500 million per year in operating costs and similar annual savings from avoiding additional capacity investments. Separate 2023 modeling estimated cost savings for five specific participants of nearly $500 million annually.
- Improved availability and integration of renewable resources, and feasibility of efficiently meeting statutory GHG reduction goals.
- Improved grid reliability and matching of generating resources and demand.
- Reduced renewable resource curtailment when supply exceeds local demand.
- Improved allocation of emissions-generating resources that are more efficient.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in Chapter 3 of the Preliminary Regulator Analyses. In this section, we estimate compliance costs per employee.

The average affected small business likely to be covered by the proposed rule amendments employs about 12 people. The largest 10 percent of affected businesses employ an average of 900 people. Many of the entities potentially impacted by the proposed rule are also governments, and are excluded from this analysis. Based on cost estimates in Chapter 3, we estimated compliance costs per employee. As discussed in Chapters 3 and 4, there is uncertainty about how costs and cost-savings will be distributed. In some cases, the businesses that incur costs will also receive cost-savings (e.g., a utility participating in a CEM), but in other cases they may be separate businesses. To capture various possibilities, we estimated the following average compliance costs per business in the first year the proposed rule amendments are likely to result in costs.

Table 1. Costs per business

Cost Estimate Type	Cost	Cost-Savings	Net Cost
Low estimate	**$321,929**	**($320,955)**	**$974**
High estimate	**$926,079**	**($925,105)**	**$974**

Then, based on costs per business and business size (small or large), we calculated costs per employee, as summarized in the tables below.

Table 2. Costs per employee, net costs

Business size	Cost per employee
Small	$42
Largest	$1

Table 3. Cost per employee, gross costs

Business size	Low cost per employee	High cost per employee
Small	$13,779	$39,638
Largest	$358	$1,029

Table 4. Cost per employee, cost-savings

Business size	Low benefit per employee	High benefit per employee
Small	($13,737)	($39,596)
Largest	($357)	($1,028)

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses, with regard to compliance costs, but may disproportionately benefit small businesses that receive a benefit of cost-savings. As we cannot confidently identify cases in which businesses will see only costs, only cost-savings, or both, ecology has conservatively included elements in the proposed rule amendments to mitigate this disproportion as far as is legal and feasible.

MITIGATION OF DISPROPORTIONATE IMPACT: The RFA (RCW 19.85.030(2)) states that:

"Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

(c) Reducing the frequency of inspections;

(d) Delaying compliance timetables;

(e) Reducing or modifying fine schedules for noncompliance; or

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

Substantive regulatory requirements: The authorizing statutes do not allow ecology to reduce, modify, or eliminate substantive regulatory requirements for any covered entities under the reporting rule or CCA rule. The areas of the rule reflecting these statutory requirements are captured in the scope of the rules, and include program coverage, compliance timetables or support of consistency with potentially linked jurisdictions, and penalties. Ecology does not have discretion in these substantive regulatory requirements.

The baseline rule and proposed amendments also allow for a federal power marketing administration to take on compliance obligations in place of small entities that purchase imported electricity from them.

Recordkeeping and reporting requirements: Recordkeeping and reporting requirements in the baseline rule and in the proposed rule amendments rely largely on maintaining consistency with other programs, using known operations data and information, and using standardized common calculations. Ecology developed the proposed amendments to reporting requirements to provide information necessary for the data's use in the CCA program, and at the same time to be feasible for importers and CEM processes, based on interested party input.

Inspections: This rule making does not address inspections, and inspections are not required under the baseline rules.

Compliance timetables: Compliance deadlines are specified in the authorizing statutes. Ecology cannot use its discretion to change these deadlines. We note also that the proposed amendments would remove some of the phased-in compliance timelines that were included in the baseline rules when they were first adopted but are no longer necessary. As part of the 2022 rule making amending the reporting rule, ecology received information that EPEs (many of which are small) desired later deadlines for the new program. While the statute specifies the reporting deadline, the rule amendments adopted at that time allowed EPEs to submit a provisional report by that deadline, followed by a final report two months later as proposed by interested parties. After gaining experience with the reporting program, reporters are more likely to be able to meet the statutory deadline, and may save costs of developing and submitting separate preliminary reports.

Penalties and noncompliance: The statute specifies many elements related to noncompliance, and could not be changed.

Other reductions of burden: Ecology also considered multiple alternative requirements during development of the proposed rule. These were found to either impose more burden on covered parties, or to not meet the goals and objectives of the authorizing statutes. See Chapter 6 for discussion of these alternatives.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in its development of the proposed rule amendments, using the following methods. Recipients and attendees include members of the public, local governments, small businesses, and business associations.

- Emails sent to meet requirements one day prior to meetings as a reminder.
- Rule development meeting reminders via GovDelivery to all rulemaking subscribers.
- Informational session #1 - July 25, 2023.
- Informational session #2 - August 2, 2023.
- Draft language input review meeting #1 - August 12, 2023.
- Draft language input review meeting #2 - August 16, 2023.
- Listening session - August 18, 2023.

- Individual meetings (by request) with:
  - BPA - August 31, 2023.
  - Western Power Trading Forum - September 6, 2023.
  - Public Generating Pool - September 11, 2023.
- Informational meeting with CAISO - September 12, 2023.
- Informational meeting with Southwest Power Pool - September 28, 2023.
- First informal comment period - July 25 to August 25, 2023.
- Second informal comment period - October 5 to October 30, 2023.
- Third informal comment period - November 8 to November 27, 2023.
- Draft language input review meeting #3 - January 24, 2024.
- Individual meetings (by request) with:
  - CARB - March 25, 2024.
  - CARB & CAISO - April 10, 2024.

CARB - May 3, 2024, Attendees variously included local and state government:

- City of Issaquah.
- City of Shoreline.
- City of Tacoma.
- Office of the attorney general.
- Puget Sound Clean Air Agency.
- Spokane Regional Clean Air Agency.
- Washington department of commerce.
- Washington department of health.
- Washington public ports association.
- Washington department of transportation.
- Washington parks and recreation commission.
- Washington state parks and recreation commission.
- Washington utilities and transportation commission.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at https://www.census.gov/naics/.

- 221122 Electric power distribution
- 221118 Other electric power generation

CONSIDERATION OF LOST SALES OR REVENUE, IMPACT ON JOBS: Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes. Finally, overall shifts in economic activity in the state, including competition within markets and attributes of the labor market simultaneously adjust in response to changes in compliance costs.

Similarly, employment within directly impacted industries, other industries in Washington, the labor market within and outside of the state, and in the state as a whole will also adjust in response to a change in costs.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on directly affected markets,

accounting for dynamic adjustments throughout the economy. The model accounts for variables including but not limited to:

- Inter-industry impacts.
- Price changes, including wages.
- Interstate and international trade.
- Population or labor market changes.
- Dynamic adjustment of all economic variables over time.

Because the REMI model aggregates homogeneous sectors, all estimated costs and cost-savings under the proposed rule amendments would occur within the same industry grouping: Electric power generation, transmission, and distribution. This means the costs of new compliance obligations and the benefits of new no-cost allowance allocations net out to zero impact. This leaves estimated reporting costs as the net inputs into the model.

Estimated additional reporting costs under the proposed rule amendments are relatively small compared to the electricity sector and state economy as a whole. As a result, the model simulations did not identify any impacts to statewide employment or output. They also did not identify any impacts to employment or output at the industry grouping level.

While we did not identify any employment or output impacts of the proposed rule as a whole, there may be distributional impacts within the electricity sector in Washington. As discussed in Chapters 3 and 4, there is considerable uncertainty about how costs and cost-savings (benefits) would be distributed across electricity importers participating in CEMs and electric utilities. Traditionally, competitive businesses with higher net operating costs would face downward pressure on output and their use of labor.

Electricity importers may also face different incentives and limitations (e.g., obligations to meet demand, government or nonprofit structures, limited local competition or geographic monopolies, regulations governing electricity rates, or variable timing of available generating resources). Where ability to respond with changes to employment or output (positive or negative) are limited, impacts may instead manifest as changes to planned infrastructure investments or timing.

A copy of the statement may be obtained by contacting TTY at 877-833-6341, Washington relay service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call ecology at 360-407-7668 or visit https://ecology.wa.gov/accessibility.

June 27, 2024
Heather R. Bartlett
Deputy Director

OTS-5373.2

AMENDATORY SECTION (Amending WSR 22-05-050, filed 2/9/22, effective 3/12/22)

WAC 173-441-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **Definitions specific to this chapter:**

(a) "40 C.F.R. Part 98" or "40 C.F.R. § 98" means the United States Environmental Protection Agency's Mandatory Greenhouse Gas Reporting regulation including any applicable subparts. All references are adopted by reference as if it was copied into this rule. References mentioned in this rule are adopted as they exist on February 9, 2022, or the adoption date in WAC 173-400-025(1), whichever is later.

(b) "Asset controlling supplier" or "ACS" means any entity that owns or operates interconnected electricity generating facilities or serves as an exclusive marketer for these facilities even though it does not own them, and has been designated by the department and received a department-published emissions factor for the wholesale electricity procured from its system. Electricity from an asset controlling supplier is considered a specified source of electricity.

(c) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, including products, by-products, residues and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(d) "Carbon dioxide equivalent" or "CO_2e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(e) "Director" means the director of the department of ecology.

(f) "Ecology" means the Washington state department of ecology.

(g) "Electric power entity" includes any of the following that supply or transact electric power in Washington: (i) Electricity importers and exporters; (ii) retail providers, including multijurisdictional retail providers; and (iii) the asset controlling suppliers. See WAC 173-441-124 for more detail.

(h) "Facility" unless otherwise specified in WAC 173-441-122, 173-441-124, or any subpart of 40 C.F.R. Part 98 as adopted in WAC 173-441-120, means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

(i) "Fuel products" means petroleum products, biomass-derived fuels, coal-based liquid fuels, natural gas, biogas, and liquid petroleum gas as established in 40 C.F.R. Part 98 Subparts LL through NN. Renewable or biogenic versions of fuel products listed in Tables MM-1 or NN-1 of 40 C.F.R. Part 98 are also considered fuel products. Assume complete combustion or oxidation of fuel products when calculating GHG emissions.

(j) "Fuel supplier" means any of the following suppliers of fuel products: (See WAC 173-441-122 for more detail.)

(i) A supplier of fossil fuel other than natural gas, including:
(A) A supplier of petroleum products;
(B) A supplier of liquid petroleum gas;
(C) A supplier of coal-based liquid fuels.
(ii) A supplier of biomass-derived fuels;
(iii) A supplier of natural gas, including:
(A) Operators of interstate and intrastate pipelines;
(B) Suppliers of liquefied or compressed natural gas;
(C) Natural gas liquid fractionators;
(D) Local distribution companies.

(k) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Beginning on January 1, 2012, "greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.

(l) "Operator" means any individual or organization who operates or supervises a facility, supplier, or electric power entity. The operator of an electric power entity may be the electric power entity itself.

(m) "Owner" means any individual or organization who has legal or equitable title to, has a leasehold interest in, or control of a facility, supplier, or electric power entity, except an individual or organization whose legal or equitable title to or leasehold interest in the facility, supplier, or electric power entity arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility, supplier, or electric power entity shall not be considered an "owner" of the facility, supplier, or electric power entity.

(n) "Person" includes the owner or operator of:
(i) A facility;
(ii) A supplier; or
(iii) An electric power entity.

(o) "Product data" means data related to a facility's production that is part of the annual GHG report.

(p) "Reporter" means any of the following subject to this chapter:
(i) A facility;
(ii) A supplier; or
(iii) An electric power entity.

(q) "Supplier" means any person who is a:
(i) Fuel supplier that produces, imports, or delivers, or any combination of producing, importing, or delivering, fuel products in Washington; and
(ii) Supplier of carbon dioxide that produces, imports, or delivers a quantity of carbon dioxide in Washington that, if released, would result in emissions in Washington.

(2) **Definitions specific to the Climate Commitment Act program.** For those terms not listed in subsection (1) of this section, WAC 173-441-122(2), or 173-441-124(2), the definitions from chapter 70A.65 RCW, as described in chapters 173-446 and 173-446A WAC apply in this chapter in order of precedence.

(3) **Definitions from 40 C.F.R. Part 98.** For those terms not listed in subsection (1) or (2) of this section, WAC 173-441-122(2), or 173-441-124(2), the definitions found in 40 C.F.R. § 98.6 or a subpart as adopted in this chapter, apply in this chapter as modified in WAC 173-441-120(2).

AMENDATORY SECTION (Amending WSR 22-05-050, filed 2/9/22, effective 3/12/22)

WAC 173-441-050 General monitoring, reporting, recordkeeping and verification requirements. Persons subject to the requirements of this chapter must submit GHG reports to ecology, as specified in this section. Every metric ton of CO_2e emitted by a reporter required to report under this chapter and covered under any applicable source category listed in WAC 173-441-120, 173-441-122, or 173-441-124 must be included in the report.

(1) **General.** Follow the procedures for emission calculation, monitoring, quality assurance, missing data, recordkeeping, and reporting that are specified in each relevant section of this chapter.

(2) **Schedule.** The annual GHG report must be submitted as follows:

(a) Report submission due date:

(i) A person required to report or voluntarily reporting GHG emissions under WAC 173-441-030 must submit the report required under this chapter to ecology no later than March 31st of each calendar year for GHG emissions in the previous calendar year. Electric power entities reporting under WAC 173-441-124 must submit a report ((~~based on best available information by March 31st. Electric power entities reporting under WAC 173-441-124 must submit a final revised report~~)) by June 1st of each calendar year for GHG emissions in the previous calendar year ((~~consistent with deadlines for electric power entities in external GHG emissions trading programs~~)).

(ii) Unless otherwise stated, if the final day of any time period falls on a weekend or a state holiday, the time period shall be extended to the next business day.

(b) Reporting requirements begin:

(i) For an existing reporter that began operation before January 1, 2012, report emissions for calendar year 2012 and each subsequent calendar year.

(ii) For a new reporter that begins operation on or after January 1, 2012, and becomes subject to the rule in the year that it becomes operational, report emissions beginning with the first operating month and ending on December 31st of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(iii) For any reporter that becomes subject to this rule because of a physical or operational change that is made after January 1, 2012, report emissions for the first calendar year in which the change occurs.

(A) Reporters begin reporting with the first month of the change and ending on December 31st of that year. For a reporter that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the reporter to exceed the applicable threshold.

(B) Suppliers and electric power entities begin reporting January 1st and ending on December 31st the year of the change.

(C) For all reporters, each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(3) **Content of the annual report.** Each annual GHG report must contain the following information. All reported information is subject

to verification by ecology as described in subsection (5) of this section.

(a) Reporter name, reporter ID number, and physical street address of the reporter, including the city, state, and zip code. If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. This must be provided in a comma-delimited "latitude, longitude" coordinate pair reported in decimal degrees to at least four digits to the right of the decimal point.

(b) Year and months covered by the report.

(c) Date of submittal.

(d) For facilities, report annual emissions of each GHG (as defined in WAC 173-441-020) and each fluorinated heat transfer fluid, as follows:

(i) Annual emissions (including biogenic CO_2) aggregated for all GHGs from all applicable source categories in WAC 173-441-120 and expressed in metric tons of CO_2e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO_2 aggregated for all applicable source categories in WAC 173-441-120, expressed in metric tons.

(iii) Annual emissions from each applicable source category in WAC 173-441-120, expressed in metric tons of each applicable GHG listed in (d)(iii)(A) through (F) of this subsection.

(A) Biogenic CO_2.

(B) CO_2 (including biogenic CO_2).

(C) CH_4.

(D) N_2O.

(E) Each fluorinated GHG.

(F) For electronics manufacturing each fluorinated heat transfer fluid that is not also a fluorinated GHG as specified under WAC 173-441-040.

(iv) Emissions and other data for individual units, processes, activities, and operations as specified in the "data reporting requirements" section of each applicable source category referenced in WAC 173-441-120.

(v) Indicate (yes or no) whether reported emissions include emissions from a cogeneration unit located at the facility.

(vi) When applying (d)(i) of this subsection to fluorinated GHGs and fluorinated heat transfer fluids, calculate and report CO_2e for only those fluorinated GHGs and fluorinated heat transfer fluids listed in WAC 173-441-040.

(vii) For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

(e) For suppliers and electric power entities, report annual emissions of each GHG (as defined in WAC 173-441-020) as follows:

(i) Annual emissions (including biogenic CO_2) aggregated for all GHGs from all applicable source categories in WAC 173-441-122 and 173-441-124 and expressed in metric tons of CO_2e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO_2 aggregated for all applicable source categories in WAC 173-441-122 and 173-441-124, expressed in metric tons.

(iii) Annual emissions from each applicable source category in WAC 173-441-122 and 173-441-124, expressed in metric tons of each applicable GHG listed in subsection (3)(d)(iii)(A) through (E) of this section.

(A) Biogenic CO_2.

(B) CO_2 (including biogenic CO_2).

(C) CH_4.

(D) N_2O.

(E) Each fluorinated GHG.

(iv) Emissions and other data for individual units, processes, activities, and operations as specified in the "data reporting requirements" section of each applicable source category referenced in WAC 173-441-122 and 173-441-124.

(f) A written explanation, as required under subsection (4) of this section, if you change emission or product data calculation methodologies during the reporting period or since the previous reporting period.

(g) Each data element for which a missing data procedure was used according to the procedures of an applicable subpart referenced in WAC 173-441-120, 173-441-122, or 173-441-124 and the total number of hours in the year that a missing data procedure was used for each data element.

(h) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of WAC 173-441-060 (5)(a).

(i) NAICS code(s) that apply to the reporter. NAICS codes are subject to approval by ecology.

(i) Primary NAICS code. Report the NAICS code that most accurately describes the reporter's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the reporter. A reporter that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) Additional NAICS code(s). Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the reporter that are not related to the principal source of revenue.

(j) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the owners (or operators) of the reporter and the percentage of ownership interest for each listed parent company as of December 31st of the year for which data are being reported according to the following instructions.

(i) If the reporter is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report 100 percent ownership.

(ii) If the reporter is entirely owned by a single United States company that is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hi-

erarchy as the United States parent company and report 100 percent ownership.

(iii) If the reporter is owned by more than one United States company (e.g., company A owns 40 percent, company B owns 35 percent, and company C owns 25 percent), provide the legal names and physical addresses of all the highest-level companies with an ownership interest as the United States parent companies and report the percent ownership of each company.

(iv) If the reporter is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report 100 percent ownership by the joint venture or cooperative.

(v) If the reporter is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report 100 percent ownership.

(vi) If the reporter is partially owned by a foreign company and partially owned by one or more United States companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other United States parent companies, and report the percent ownership of each of these companies.

(vii) If the reporter is a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(k) An indication of whether the facility includes one or more plant sites that have been assigned a "plant code" by either the Department of Energy's Energy Information Administration or by the Environmental Protection Agency's (EPA) Clean Air Markets Division.

(l) Facilities must report electricity information including:

(i) Total annual electricity purchased in megawatt hours (MWh), itemized by the supplying utility or, if not obtained from a utility, from the supplying electric power entity for each different source of electricity. Total annual purchases must be reported separately for each supplying utility or electric power entity.

(ii) Self-generated electricity should be itemized separately if a facility includes an electricity generating unit as follows:

(A) Total facility nameplate generating capacity in megawatts (MW).

(B) Generated electricity in MWh provided or sold to each retail provider, electricity marketer, or other reportable end-user that is not a part of the facility, itemized by end-user.

(C) Generated electricity for on-site industrial applications not related to electricity generation in MWh.

(m) Report fuel use or supplied as follows:

(i) Facilities, report each fuel combusted separately by type, quantity, and units of measurement.

(ii) Fuel suppliers, report:

(A) Each fuel supplied separately by type, quantity, and units of measurement; and

(B) Separately report the quantity of each fuel type by purpose if the fuel supplier reports that the fuel is used for one of the purposes described in WAC 173-441-122 (5)(d)(xi).

(n) Facilities, report total annual facility product data, units of production, and specific product based on their first primary NAICS code.

(i) Facilities with a primary NAICS code listed in Table 050-1 of this section must report total annual facility product data as described in Table 050-1. Facilities may additionally report total annual facility product data as described in Table 050-1 for any reported secondary NAICS code. Use six digit NAICS codes when available, otherwise use the shorter NAICS codes listed below substituting the values in the full reported six digit NAICS code for "X".

Table 050-1: Total Annual Facility Product Data Requirements by Primary NAICS Code.

Primary NAICS Code and Sector Definition	Activity	Production Metric
112112: Cattle Feedlots	Cattle feedlots	Cattle head days
211130: Natural Gas Extraction	Natural gas extraction	Million standard cubic feet of natural gas extracted
212399: All Other Nonmetallic Mineral Mining	Freshwater diatomite filter aids manufacturing	Metric tons of mineral product produced
2211XX: Electric Power Generation, Transmission and Distribution	Electric power generation, transmission and distribution	Net megawatt hours
221210: Natural Gas Distribution	Natural gas distribution	Million standard cubic feet of natural gas distributed
221330: Steam and Air-conditioning Supply	Steam supply	Kilograms steam produced
311213: Malt Manufacturing	Malt manufacturing	Metric tons of malt produced
3114XX: Fruit and Vegetable Preserving and Specialty Food Manufacturing	Fruit and vegetable preserving and specialty food manufacturing	Metric tons of food product produced
3115XX: Dairy Product Manufacturing	Dairy product manufacturing	Metric tons of dairy product produced
311611: Animal (except poultry) Slaughtering	Animal (except poultry) slaughtering	Metric tons of meat product processed
311613: Rendering and Meat By-product Processing	Rendering and meat by-product processing	Metric tons of meat by-product processed
311919: Other Snack Food Manufacturing	Other snack food manufacturing	Metric tons of snack food produced
311920: Coffee and Tea Manufacturing	Coffee and tea manufacturing	Metric tons of coffee and tea produced
321XXX: Wood Product Manufacturing	Wood product manufacturing	Air dried (10 percent moisture) metric tons of wood product produced
3221XX: Pulp, Paper, and Paperboard Mills	Pulp, paper, and paperboard mills	Air dried (10 percent moisture) metric tons of produced: • Pulp product; or • Paper; or • Paperboard
322299: All Other Converted Paper Product Manufacturing	All other converted paper product manufacturing	Air dried (10 percent moisture) metric tons of converted paper product produced

Primary NAICS Code and Sector Definition	Activity	Production Metric
324110: Petroleum Refineries	Petroleum refineries	Report all of the following: • Facility level Subpart MM report as reported under 40 C.F.R. Part 98; • Barrels of crude oil and intermediate products received from off-site that are processed at the facility; and • Beginning with the first emissions year after a refinery's first turnaround after 2022, the refinery must also submit complexity weighted barrel (CWB) as described in CARB MRR section 95113(l)(3) as adopted by 7/1/2021. CWB supporting data must also be submitted to Ecology as described in CARB MRR section 95113(l)(3).
324121: Asphalt Paving Mixture and Block Manufacturing	Asphalt paving mixture and block manufacturing	Metric tons of asphalt paving mixture and block produced
3251XX: Basic Chemical Manufacturing	Basic chemical manufacturing	Metric tons of chemical produced
325311: Nitrogenous Fertilizer Manufacturing	Nitric acid production	Metric tons of nitric acid produced
32721X: Glass and Glass Product Manufacturing	Glass and glass product manufacturing	Metric tons of glass produced
327310: Cement Manufacturing	Cement manufacturing	Metric tons of adjusted clinker and mineral additives produced
327390: Other Concrete Product Manufacturing	Other concrete product manufacturing	Metric tons of concrete product produced
327410: Lime Manufacturing	Lime manufacturing	Metric tons of lime produced
327420: Gypsum Product Manufacturing	Gypsum product manufacturing	Metric tons of gypsum product produced
331110: Iron and Steel Mills and Ferroalloy Manufacturing	Steel production using an electric arc furnace (EAF)	Metric tons of steel produced
33131X: Alumina and Aluminum Production and Processing	Alumina and aluminum production and processing	Metric tons of aluminum produced
331410: Nonferrous Metal (except aluminum) Smelting and Refining	Granular polysilicon production	Metric tons of granular polysilicon produced
332111: Iron and Steel Forging	Iron forging	Metric tons of iron produced
334413: Semiconductor and Related Device Manufacturing	Semiconductor and related device manufacturing	Square meters of mask layer produced
335991: Carbon and Graphite Product Manufacturing	Carbon and graphite product manufacturing	Metric tons of carbon and graphite product produced
3364XX: Aerospace Product and Parts Manufacturing	Aerospace product and parts manufacturing	• Metric tons of aircraft product and parts produced; or • Square meters of external surface area of aircraft
486210: Pipeline Transportation of Natural Gas	Pipeline transportation of natural gas	Million standard cubic feet of natural gas transported
488119: Other Airport Operations	Other airport operations	Passenger kilometers serviced
562111: Solid Waste Collection	Solid waste collection	Metric tons of total solid waste collected
562212: Solid Waste Landfill	Solid waste landfill	Metric tons of total waste entered into landfill
562213: Solid Waste Combustors and Incinerators	Solid waste combustors and incinerators	Net megawatt hours

Primary NAICS Code and Sector Definition	Activity	Production Metric
611310: Colleges, Universities, and Professional Schools	Colleges, universities, and professional schools	Students serviced
928110: National Security	Military bases	Troops stationed

(ii) Facilities without a primary NAICS code listed in Table 050-1 of this section must contact ecology no later than 45 calendar days prior to the emissions report deadline established in subsection (2) of this section and report total annual facility product data as instructed by the department. If ecology does not identify product data for a facility, a facility must use the energy-based calculation method described in Equation 050-1 of this section. Report product data and inputs to the equation. Product data calculated using the energy-based method shall use the following equation:

$$\text{Product data} = S_{consumed} + F_{consumed} - e_{sold} \qquad \text{(Eq. 050-1)}$$

Where:

"$S_{Consumed}$" is the annual amount of steam consumed, measured in MMBtu, at the facility for any process, including heating or cooling applications. This value shall exclude any steam used to produce electricity. This value shall exclude steam produced from an on-site cogeneration unit;

"$F_{Consumed}$" is the annual amount of energy produced due to fuel combustion at the facility, measured in MMBtu. This value shall be calculated based on measured higher heating values or the default higher heating value of the applicable fuel in Table C-1 of 40 C.F.R. Part 98. This value shall include any energy from fuel combusted in an on-site electricity generation or cogeneration unit. This value shall exclude energy to generate the steam accounted for in the "$S_{Consumed}$" term;

"e_{Sold}" is the annual amount of electricity sold or provided for off-site use, measured in MWh and converted to MMBtu using the reporting year U.S. Energy Information Administration conversion factor;

(iii) Facilities with a change in operation that alters either their primary NAICS code, units of production, or product data measurement method must contact ecology no later than 45 calendar days prior to the emissions report deadline established in subsection (2) of this section and report total annual facility product data as instructed by the department. If ecology does not identify product data for a facility, a facility must use the energy-based calculation method described in Equation 050-1 of this section. Report product data and inputs to the equation.

(iv) For a primary NAICS code in Table 050-1 that has multiple production metrics, a facility that wishes to change their reported production metric must contact ecology no later than 45 calendar days prior to the emissions report deadline established in subsection (2) of this section and report total annual facility production data as instructed by the department.

(o) Reporters that cease operation, other than routine maintenance or seasonal shutdowns, for more than 90 calendar days must provide the following information:

(i) The anticipated type of cessation: Closure or curtailment;

(ii) Date cessation began;

(iii) Date cessation ended (if applicable); and

(iv) Reason for cessation and/or resumption of operation.

(p) If there is an increase or decrease of more than five percent in emissions of greenhouse gases in relation to the previous year, the reporter must provide a brief narrative description of what caused the increase or decrease in emissions.

(4) **Emission calculations.** In preparing the GHG report, you must use the calculation methodologies specified in the relevant sections of this chapter. For each source category, you must use the same calculation methodology as previous reports. This includes throughout a reporting period, and between reporting years. An owner or operator intending to change methodologies must provide a written explanation at least 60 calendar days before the report submission due date in subsection (2)(a) of this section of why a change in methodology was required. Ecology has 45 calendar days to approve or reject the change in method. The reporter must continue to use existing methods until the change is approved by ecology.

(5) **Verification.** To verify the completeness and accuracy of reported GHG emissions, ecology may review the certification statements described in subsection (3)(h) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. Nothing in this section prohibits ecology from using additional information to verify the completeness and accuracy of the reports. Reporters must cooperate with ecology's efforts to verify GHG reports.

(6) **Recordkeeping.** A person that is required to report GHGs under this chapter must keep records as specified in this subsection. Retain all required records for at least 10 years from the date of submission of the annual GHG report for the reporting year in which the record was generated. Upon request by ecology, the person must submit the records required under this section within 15 business days of receipt of the notification, unless a different schedule is agreed to by ecology. Records may be retained off-site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records must be made available, or, if requested by ecology, electronic records must be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable section of this chapter:

(a) A list of all units, operations, processes, and activities for which GHG emissions were calculated.

(b) The data used to calculate the GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to, the following information:

(i) The GHG emissions calculations and methods used.

(ii) Analytical results for the development of site-specific emissions factors.

(iii) The results of all required analyses for high heat value, carbon content, and other required fuel or feedstock parameters.

(iv) Any facility operating data or process information used for the GHG emission calculations.

(c) The annual GHG reports.

(d) Missing data computations. For each missing data event, also retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment.

(e) Owners or operators required to report under WAC 173-441-030 must keep a written GHG monitoring plan (monitoring plan, plan).

(i) At a minimum, the GHG monitoring plan must include the following elements:

(A) Identification of positions of responsibility (i.e., job titles) for collection of the emissions data.

(B) Explanation of the processes and methods used to collect the necessary data for the GHG calculations.

(C) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(D) Facilities must reference to one or more simplified block diagrams that provide a clear visual representation of the relative locations and positions of measurement devices and sampling locations, as applicable, required for calculating covered emissions and covered product data (e.g., temperature, total pressure, HHV, fuel consumption). The diagram(s) must include fuel sources, combustion units, and production processes, as applicable.

(ii) The GHG monitoring plan may rely on references to existing corporate documents (e.g., standard operating procedures, quality assurance programs under appendix F to 40 C.F.R. Part 60 or appendix B to 40 C.F.R. Part 75, and other documents) provided that the elements required by (e)(i) of this subsection are easily recognizable.

(iii) The owner or operator must revise the GHG monitoring plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

(iv) Upon request by ecology, the owner or operator must make all information that is collected in conformance with the GHG monitoring plan available for review during an audit within 15 business days of receipt of the notification, unless a different schedule is agreed to by ecology. Electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit.

(f) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(g) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(h) Suppliers and electric power entities must retain any other data specified in WAC 173-441-122 and 173-441-124.

(7) **Annual GHG report revisions.**

(a) A person must submit a revised annual GHG report within 45 calendar days of discovering that an annual GHG report that the person previously submitted contains one or more substantive errors. The revised report must correct all substantive errors.

(b) Ecology may notify the person in writing that an annual GHG report previously submitted by the person contains one or more substantive errors. Such notification will identify each such substantive

error. The person must, within 45 calendar days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this chapter) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(c) A substantive error is an error that impacts the quantity of GHG emissions reported, product data reported, or otherwise prevents the reported data from being validated or verified.

(d) Notwithstanding (a) and (b) of this subsection, upon request by a person, ecology may provide reasonable extensions of the 45-day period for submission of the revised report or information under (a) and (b) of this subsection. If ecology receives a request for extension of the 45-day period, by email, at least five business days prior to the expiration of the 45 calendar day period, and ecology does not respond to the request by the end of such period, the extension request is deemed to be automatically granted for 15 more calendar days. During the automatic 15-day extension, ecology will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(e) The owner or operator must retain documentation for 10 years to support any revision made to an annual GHG report.

(8) **Calibration and accuracy requirements.** The owner or operator of a facility that is subject to the requirements of this chapter must meet the applicable flow meter calibration and accuracy requirements of this subsection. The accuracy specifications in this subsection do not apply where either the use of company records (as defined in WAC 173-441-020(3)) or the use of "best available information" is specified in an applicable subsection of this chapter to quantify fuel usage and/or other parameters. Further, the provisions of this subsection do not apply to stationary fuel combustion units that use the methodologies in 40 C.F.R. Part 75 to calculate CO_2 mass emissions. Measurement devices used for financial transactions between two or more independent parties meet the calibration and accuracy requirements of this chapter.

(a) Except as otherwise provided in (d) through (f) of this subsection, flow meters that measure liquid and gaseous fuel feed rates, process stream flow rates, product data measuring devices, or feedstock flow rates and provide data for the GHG emissions calculations or product data, must be calibrated prior to January 1, 2012, for emissions data or January 1, 2023, for product data, using the procedures specified in this subsection when such calibration is specified in a relevant section of this chapter. Each of these flow meters must meet the applicable accuracy specification in (b) or (c) of this subsection. All other measurement devices (e.g., weighing devices) that are required by a relevant subsection of this chapter, and that are used to provide data for the GHG emissions calculations or product data, must also be calibrated prior to January 1, 2012, for emissions data or January 1, 2023, for product data; however, the accuracy specifications in (b) and (c) of this subsection do not apply to these devices. Rather, each of these measurement devices must be calibrated to meet the accuracy requirement specified for the device in the applicable subsection of this chapter, or, in the absence of such accuracy requirement, the device must be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based

on an applicable operating standard including, but not limited to, manufacturer's specifications and industry standards. The procedures and methods used to quality-assure the data from each measurement device must be documented in the written monitoring plan, pursuant to subsection (6)(e)(i)(C) of this section.

(i) All flow meters and other measurement devices that are subject to the provisions of this subsection must be calibrated according to one of the following: You may use the manufacturer's recommended procedures; an appropriate industry consensus standard method; or a method specified in a relevant section of this chapter. The calibration method(s) used must be documented in the monitoring plan required under subsection (6)(e) of this section.

(ii) For reporters that become subject to this chapter after January 1, 2012, all flow meters and other measurement devices (if any) that are required by the relevant subsection(s) of this chapter to provide data for the GHG emissions calculations or product data must be installed no later than the date on which data collection is required to begin using the measurement device, and the initial calibration(s) required by this subsection (if any) must be performed no later than that date.

(iii) Except as otherwise provided in (d) through (f) of this subsection, subsequent recalibrations of the flow meters and other measurement devices subject to the requirements of this subsection must be performed at one of the following frequencies:

(A) You may use the frequency specified in each applicable subsection of this chapter.

(B) You may use the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency is specified in an applicable subsection.

(b) Perform all flow meter calibration at measurement points that are representative of the normal operating range of the meter. Except for the orifice, nozzle, and venturi flow meters described in (c) of this subsection, calculate the calibration error at each measurement point using Equation A-2 of this subsection. The terms "R" and "A" in Equation A-2 must be expressed in consistent units of measure (e.g., gallons/minute, ft^3/min). The calibration error at each measurement point must not exceed 5.0 percent of the reference value.

$$CE = \frac{|R-A|}{R} \times 100 \qquad \textit{(Eq. A – 2)}$$

Where:

CE = Calibration error (%)

R = Reference value

A = Flow meter response to the reference value

(c) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in situ calibration of the differential pressure (delta-P), total pressure, and temperature transmitters.

(i) Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A-3 of this subsection. The terms "R," "A," and "FS" in Equation A-3 of this subsection must be in consistent units of measure

(e.g., milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point must not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (i.e., at the zero level and at each upscale level) does not exceed 6.0 percent.

$$CE = \frac{|R-A|}{FS} \times 100 \qquad \textit{(Eq. A – 3)}$$

Where:

CE = Calibration error (%)
R = Reference value
A = Transmitter response to the reference value
FS = Full-scale value of the transmitter

(ii) In cases where there are only two transmitters (i.e., differential pressure and either temperature or total pressure) in the immediate vicinity of the flow meter's primary element (e.g., the orifice plate), or when there is only a differential pressure transmitter in close proximity to the primary element, calibration of these existing transmitters to a CE of 2.0 percent or less at each measurement point is still required, in accordance with (c)(i) of this subsection; alternatively, when two transmitters are calibrated, the results are acceptable if the sum of the CE values for the two transmitters at each calibration level does not exceed 4.0 percent. However, note that installation and calibration of an additional transmitter (or transmitters) at the flow monitor location to measure temperature or total pressure or both is not required in these cases. Instead, you may use assumed values for temperature and/or total pressure, based on measurements of these parameters at a remote location (or locations), provided that the following conditions are met:

(A) You must demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions.

(B) You must make all temperature and/or total pressure measurements in the demonstration described in (c)(ii)(A) of this subsection with calibrated gauges, sensors, transmitters, or other appropriate measurement devices. At a minimum, calibrate each of these devices to an accuracy within the appropriate error range for the specific measurement technology, according to one of the following: You may calibrate using a manufacturer's specification or an industry consensus standard.

(C) You must document the methods used for the demonstration described in (c)(ii)(A) of this subsection in the written GHG monitoring plan under subsection (6)(e)(i)(C) of this section. You must also include the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations in the GHG monitoring plan. You must maintain all of this information in a format suitable for auditing and inspection.

(D) You must use the mathematical correlation(s) derived from the demonstration described in (c)(ii)(A) of this subsection to convert the remote temperature or the total pressure readings, or both, to the

actual temperature or total pressure at the flow meter, or both, on a daily basis. You must then use the actual temperature and total pressure values to correct the measured flow rates to standard conditions.

(E) You must periodically check the correlation(s) between the remote and actual readings (at least once a year), and make any necessary adjustments to the mathematical relationship(s).

(d) Fuel billing meters are exempted from the calibration requirements of this section and from the GHG monitoring plan and recordkeeping provisions of subsection (6)(e)(i)(C) and (g) of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company. Meters used exclusively to measure the flow rates of fuels that are used for unit startup are also exempted from the calibration requirements of this section.

(e) For a flow meter that has been previously calibrated in accordance with (a) of this subsection, an additional calibration is not required by the date specified in (a) of this subsection if, as of that date, the previous calibration is still active (i.e., the device is not yet due for recalibration because the time interval between successive calibrations has not elapsed). In this case, the deadline for the successive calibrations of the flow meter must be set according to one of the following: You may use either the manufacturer's recommended calibration schedule or you may use the industry consensus calibration schedule.

(f) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the deadline established in (a) of this subsection for the initial calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. The subsequent required recalibrations of the flow meters may be similarly postponed. Such postponements must be documented in the monitoring plan that is required under subsection (6)(e) of this section.

(g) If the results of an initial calibration or a recalibration fail to meet the required accuracy specification, data from the flow meter must be considered invalid, beginning with the hour of the failed calibration and continuing until a successful calibration is completed. You must follow the missing data provisions provided in the relevant missing data sections during the period of data invalidation.

(h) Missing data substitution procedures. Persons must comply with 40 C.F.R. Part 98 when substituting for missing data. Substitute missing data used for product data or other data required under this section that is not included in your 40 C.F.R. Part 98 report by using the best available estimate of the parameter, based on all available data.

(9) **Measurement device installation.** 40 C.F.R. § 98.3(j) and 40 C.F.R. § 98.3(d) are adopted by reference as modified in WAC 173-441-120(2).

AMENDATORY SECTION (Amending WSR 22-05-050, filed 2/9/22, effective 3/12/22)

WAC 173-441-124 Calculation methods for electric power entities. This section establishes the scope of reportable energy and GHG emis-

sions under this chapter and GHG emissions calculation methods for electric power entities. Owners and operators of electric power entities must follow the requirements of this section to determine if they are required to report under WAC 173-441-030(3). Owners and operators of electric power entities that are subject to this chapter must follow the requirements of this section when calculating emissions. If a conflict exists between a provision in WAC 173-441-010 through 173-441-110 and 173-441-140 through 173-441-170 and any applicable provision of this section, the requirements of those sections must take precedence.

(1) **General requirements.** An owner or operator of an electric power entity subject to the requirements of this chapter must report GHG emissions, including GHG emissions from biomass, from all applicable categories listed in (a) of this subsection using the methods and procedures in this section.

(a) Electric power entity categories:

(i) Electricity importers and exporters, as defined in this section;

(ii) Retail providers, including multijurisdictional retail providers, as defined in this section;

(iii) Asset controlling suppliers;

(iv) Electric generating facilities in Washington state must report using the methods specified in WAC 173-441-120.

(b) The calculation methods for voluntary reporting in WAC 173-441-120(3) apply, except calculation methods in WAC 173-441-120 (3)(b) take precedence over the methods from WAC 173-441-120 (3)(a).

(c) Alternative calculation methods approved by petition. An owner or operator may petition ecology to use calculation methods other than those specified in this section to calculate its electric power entities GHG emissions. Such alternative calculation methods must be approved by ecology prior to reporting and must meet the requirements of WAC 173-441-140.

(2) **Definitions specific to electric power entities.** The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Centralized electricity market" means an electricity market organized and operated by a market operator and approved by the Federal Energy Regulatory Commission to provide wholesale electricity to market participants through a system of bidding and generation resource offers that are used to determine the dispatch of electricity from market participants. Examples of existing and proposed centralized electricity markets include the Energy Imbalance Market and Extended Day Ahead Market operated by the California Independent System Operator, and the Markets+ market operated by the Southwest Power Pool.

(b) "Deemed market importer" means a market participant that successfully offers electricity from a resource into a centralized electricity market and is assigned, designated, deemed, or attributed to be serving Washington electric load by the methodologies, processes, or decision algorithms that are put in place by the market operator of that centralized electricity market and approved by the department of ecology. For the Energy Imbalance Market, the deemed market importer is the participating resource scheduling coordinator.

(c) "Direct delivery of electricity" means electricity that meets any of the following criteria: The facility has a first point of interconnection at a Washington scheduling point or within a ((~~power system~~)) balancing authority area located entirely in Washington; The

electricity is scheduled for delivery from the specified source to a Washington scheduling point or a ((~~power system~~)) balancing authority area located entirely in Washington via a continuous physical transmission path from interconnection of the facility in the balancing authority in which the facility is located to the Washington scheduling point or ((~~power system~~)) balancing authority area located entirely in Washington; or there is an agreement to dynamically transfer electricity from the facility to a Washington scheduling point or ((~~power system~~)) balancing authority area located entirely in Washington; or the facility has a first point of interconnection within a centralized electricity market and electricity from that facility is attributed to Washington by the centralized electricity market.

(d) "Electricity exporter" means electric power entities that deliver exported electricity. The entity that exports electricity is identified on the e-tag as the purchasing-selling entity (PSE) on the last segment of the tag's physical path, with the point of receipt located inside Washington state and the point of delivery located outside Washington state. For electricity that is exported from a designated scheduling point in the balancing authority area of a federal power marketing administration, the exporter is the purchasing-selling entity at the first point of the physical path of the e-tag that is not the generation source.

((~~(b)~~)) (e) "Electricity generating facility" means a facility that generates electricity and includes one or more generating units at the same location.

((~~(c)~~)) (f) "Electricity importer" means:

(i) For electricity that is scheduled with an e-tag to a final point of delivery into a balancing authority area located entirely within Washington state, the electricity importer is identified on the e-tag as the purchasing-selling entity on the last segment of the tag's physical path with the point of receipt located outside Washington state and the point of delivery located inside Washington state;

(ii) For facilities physically located outside Washington state with the first point of interconnection to a balancing authority area located entirely within Washington state when the electricity is not scheduled on an e-tag, the electricity importer is the facility operator or owner;

(iii) For imported electricity ((~~imported~~)) assigned, designated, deemed, or attributed to Washington through a centralized electricity market, the electricity importer is the ((~~retail provider, marketer, or asset controlling supplier that conducts an electricity transaction through the EIM that results in EIM power being delivered to final point of delivery in Washington state~~)) deemed market importer;

(iv) For electricity from facilities allocated to serve retail electricity customers of a multijurisdictional electric company, the electricity importer is the multijurisdictional electric company;

(v) If the importer identified under (c)(i) of this subsection is a federal power marketing administration over which Washington state does not have jurisdiction, and the federal power marketing administration has not voluntarily elected to comply with this chapter, then the electricity importer is the next purchasing-selling entity in the physical path on the e-tag, or if no additional purchasing-selling entity over which Washington state has jurisdiction, then the electricity importer is the electric utility that operates the Washington state transmission or distribution system, or the generation balancing authority;

(vi) For electricity that is imported into the state by a federal power marketing administration and sold to a public body or cooperative customer or direct service industrial customer located in Washington state pursuant to section 5 (b) or (d) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501, the electricity importer is the federal marketing administration;

(vii) If the importer identified under (c)(vi) of this subsection has not voluntarily elected to comply with this chapter, then the electricity importer is the public body or cooperative customer or direct service industrial customer;

(viii) For electricity that is imported into the state to a designated scheduling point inside the balancing authority area of a federal power marketing administration, the importer is the purchasing-selling entity on the e-tag at the last point on the physical path that is not the sink;

(ix) If the importer identified under (c)(vii) of this subsection is a federal power marketing administration that has not elected to voluntarily comply with this chapter, then the importer is the retail provider with which the scheduling point is associated; or

(x) For electricity from facilities allocated to a consumer-owned utility inside Washington state from a multijurisdictional consumer-owned utility, the electricity importer is the consumer-owned utility inside Washington state.

((~~(d) "First jurisdictional deliverer" means the owner or operator of an electric generating facility in Washington state or an electricity importer.~~

~~(e) "Generation providing entity" or "GPE" means a facility or generating unit operator, full or partial owner, party to a contract for a fixed percentage of net generation from the facility or generating unit, party to a tolling agreement with the owner, or exclusive marketer for the facility or generating unit recognized by ecology.~~

~~(f) "Retail provider" means any of the following:~~

~~(i) An electric utility as defined in RCW 19.405.020(14);~~

~~(ii) Multijurisdictional retail providers;~~

~~(iii) Multijurisdictional consumer-owned utilities.~~

~~(g) "Imported electricity" means electricity generated outside Washington state with a final point of delivery within the state.~~

~~(i) "Imported electricity" includes electricity from an organized market, such as the energy imbalance market.~~

~~(ii) "Imported electricity" includes imports from linked jurisdictions, but such imports shall be construed as having no emissions.~~

~~(iii) Electricity from a system that is marketed by a federal power marketing administration shall be construed as "imported electricity," not electricity generated in Washington state.~~

~~(iv) "Imported electricity" does not include electricity imports of unspecified electricity that are netted by exports of unspecified electricity to any jurisdiction not covered by a linked program by the same entity within the same hour.~~

~~(v) For a multijurisdictional electric company, "imported electricity" means electricity, other than from in-state facilities, that contributes to a common system power pool. Where a multijurisdictional electric company has a cost allocation methodology approved by the Washington state utilities and transportation commission, the allocation of specific facilities to Washington state's retail load will be in accordance with that methodology.~~

~~(vi) For a multijurisdictional consumer-owned utility, "imported electricity" includes electricity from facilities that contribute to a~~

~~common system power pool that are allocated to a consumer-owned utility inside Washington state pursuant to a methodology approved by the governing board of the consumer-owned utility.~~

~~(h) "Multijurisdictional consumer-owned utility" means an electric generation and transmission cooperative owned by a collection of consumer-owned utilities in multiple states or a consumer-owned utility that provides electricity to member owners in Washington state and in one or more other states in a contiguous service territory or from a common power system.~~

~~(i) "Multijurisdictional electric company" means an investor-owned utility that provides electricity to customers in Washington state and in one or more other states in a contiguous service territory or from a common power system.~~

~~(j) "Multijurisdictional retail provider" means a:~~

~~(i) Multijurisdictional electric company; or~~

~~(ii) Multijurisdictional consumer-owned utility.~~

~~(k)~~)) (g) "Electricity transaction" means the purchase, sale, import, export, or exchange of electric power. An electricity transaction also includes the successful offer of energy from a resource located in Washington to a centralized electricity market or from a resource located outside Washington that is attributed to Washington by the centralized electricity market, and the purchase of energy by a Washington utility from a centralized electricity market.

(h) "Energy Imbalance Market" or "EIM" means the Western Energy Imbalance Market operated by the California Independent System Operator.

(i) "E-tag" means an energy tag representing transactions on the North American bulk electricity market scheduled to flow between or across balancing authority areas and to and from locations listed in an affiliated registry, as represented in a manner and form created by the North American Electric Reliability Corporation and as maintained by the North American Energy Standards Board or a successor organization.

((~~(l) "Point of delivery" means a point on the electricity transmission or distribution system where a deliverer makes electricity available to a receiver, or available to serve load. This point may be an interconnection with another system or a substation where the transmission provider's transmission and distribution systems are connected to another system, or a distribution substation where electricity is imported into the state over a multijurisdictional retail provider's distribution system.~~

~~(m) "Specified source of electricity" or "specified source" means a facility, unit, or asset controlling supplier that is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility or a written power contract to procure electricity generated by that facility or unit or from an asset controlling supplier at the time of entry into the transaction to procure electricity.~~

~~(n) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to procure electricity.~~

~~(o) "Electricity exporter" means electric power entities that deliver exported electricity. The entity that exports electricity is identified on the e-tag as the purchasing-selling entity (PSE) on the last segment of the tag's physical path, with the point of receipt located inside Washington state and the point of delivery located outside Washington state. For electricity that is exported from a desig-~~

~~nated scheduling point in the balancing authority area of a federal power marketing administration, the exporter is the purchasing-selling entity at the first point of the physical path of the e-tag that is not the generation source.~~

~~(p) "Electricity transaction" means the purchase, sale, import, export or exchange of electric power.~~

~~(q) "Energy imbalance market" or "EIM" means the western energy imbalance market operated by the California independent system operator.~~

~~(r)~~)) (j) "Exported electricity" means electricity generated inside Washington state and delivered to serve load located outside Washington state. This includes electricity delivered from a first point of receipt inside Washington state, to the first point of delivery outside Washington state, with a final point of delivery outside Washington state. Exported electricity delivered across balancing authority areas ((~~is~~)) may be documented on e-tags with the first point of receipt located inside Washington state and the final point of delivery located outside Washington state. Exported electricity does not include electricity generated inside Washington state then transmitted outside of Washington state, but with a final point of delivery inside Washington state. Exported electricity does not include electricity generated inside Washington state that is allocated to serve Washington state retail customers of a multijurisdictional retail provider, consistent with a cost allocation methodology approved by the Washington state utilities and transportation commission and the utility regulatory commission of at least one additional state in which the multijurisdictional retail provider provides retail electric service.

((~~(s)~~)) (k) "Extended day ahead market" means the extended day ahead market operated by the California Independent System Operator.

(l) "Final point of delivery" means the sink specified on the e-tag, where defined points have been established through the affiliated registry. When e-tags are not used to document electricity deliveries, as may be the case within a balancing authority, the final point of delivery is the location of the load. Exported electricity is disaggregated by the final point of delivery ((~~on the e-tag~~)).

((~~(t)~~)) (m) "First point of delivery in Washington" means the first defined point on the transmission system located inside Washington state at which imported electricity may be measured, consistent with defined points that have been established through the affiliated registry.

((~~(u)~~)) (n) "First point of receipt" means the generation source specified on the e-tag, where defined points have been established through the affiliated registry. When e-tags are not used to document electricity deliveries, as may be the case within a balancing authority, the first point of receipt is the location of the individual generating facility or unit, or group of generating facilities or units.

((~~(v)~~)) (o) "Generation providing entity" or "GPE" means a facility or generating unit operator, full or partial owner, party to a contract for a fixed percentage of net generation from the facility or generating unit, party to a tolling agreement with the owner, or exclusive marketer for the facility or generating unit recognized by ecology.

(p) "Grid" or "electric power grid" means a system of synchronized power providers and consumers connected by transmission and distribution lines and operated by one or more control centers.

((~~(w)~~)) (q) "Imported electricity" means electricity generated outside Washington state with a final point of delivery within the state.

(i) "Imported electricity" includes electricity transferred into or attributed to Washington by a centralized electricity market but does not include electricity imported into Washington by a market operator to obtain or provide emergency assistance under applicable emergency preparedness and operations reliability standards of the North American Electric Reliability Corporation or Western Electricity Coordinating Council.

(ii) "Imported electricity" includes imports from linked jurisdictions, but such imports shall be construed as having no emissions.

(iii) Electricity from a system that is marketed by a federal power marketing administration shall be construed as "imported electricity," not electricity generated in Washington state.

(iv) "Imported electricity" does not include electricity imports of unspecified electricity that are netted by exports of unspecified electricity to any jurisdiction not covered by a linked program by the same entity within the same hour.

(v) For a multijurisdictional electric company, "imported electricity" means electricity, other than from in-state facilities, that contributes to a common system power pool. Where a multijurisdictional electric company has a cost allocation methodology approved by the Washington state utilities and transportation commission, the allocation of specific facilities to Washington state's retail load will be in accordance with that methodology.

(vi) For a multijurisdictional consumer-owned utility, "imported electricity" includes electricity from facilities that contribute to a common system power pool that are allocated to a consumer-owned utility inside Washington state pursuant to a methodology approved by the governing board of the consumer-owned utility.

(r) "Last point of delivery in Washington" means the last defined point on the transmission system located inside Washington state at which exported electricity may be measured, consistent with defined points that have been established through the North American Energy Standards Board Electric Industry Registry.

((~~(x)~~)) (s) "Marketer" means a purchasing-selling entity that delivers electricity and is not a retail provider.

((~~(y)~~)) (t) "Market operator" means the legal entity that operates and maintains a centralized electricity market.

(u) "Market participant" means an electric power entity that has an agreement with a centralized electricity market operator and participates in that centralized electricity market in accordance with the rules and procedures of that market, as well as with an approved tariff that governs the operations of the centralized electricity market.

(v) "Markets plus" or "Markets+" means the Markets+ centralized day ahead electricity market designed by the Southwest Power Pool.

(w) "Multijurisdictional consumer-owned utility" means an electric generation and transmission cooperative owned by a collection of consumer-owned utilities in multiple states or a consumer-owned utility that provides electricity to member owners in Washington state and in one or more other states in a contiguous service territory or from a common power system.

(x) "Multijurisdictional electric company" means an investor-owned utility that provides electricity to customers in Washington

state and in one or more other states in a contiguous service territory or from a common power system.

(y) "Multijurisdictional retail provider" means a:

(i) Multijurisdictional electric company; or

(ii) Multijurisdictional consumer-owned utility.

(z) "Point of delivery" means a point on the electricity transmission or distribution system where a deliverer makes electricity available to a receiver, or available to serve load. This point may be an interconnection with another system or a substation where the transmission provider's transmission and distribution systems are connected to another system, or a distribution substation where electricity is imported into the state over a multijurisdictional retail provider's distribution system.

(aa) "Point of receipt" or "POR" means the point on an electricity transmission or distribution system where an electricity receiver receives electricity from a deliverer. This point can be an interconnection with another system or a substation where the transmission provider's transmission and distribution systems are connected to another system.

((~~(z)~~)) (bb) "Power" means electricity, except where the context makes clear that another meaning is intended.

((~~(aa)~~)) (cc) "Power contract" or "written power contract," as used for the purposes of documenting specified versus unspecified sources of imported and exported electricity, means a written document, including associated verbal or electronic records if included as part of the written power contract, arranging for the sale or procurement of electricity. Power contracts may be, but are not limited to, power purchase agreements, enabling agreements, electricity transactions, and tariff provisions, without regard to duration, or written agreements to import or export on behalf of another entity, as long as that other entity also reports to ecology the same imported or exported electricity. A power contract for a specified source is a contract that is contingent upon delivery of power from a particular facility, unit, or asset-controlling supplier's system that is designated at the time the transaction is executed.

((~~(bb)~~)) (dd) "Purchasing-selling entity" or "PSE" means the entity that is identified on an e-tag for each physical path segment.

((~~(cc)~~)) (ee) "Retail end use customer" or "retail end user" means a residential, commercial, agricultural, or industrial electric customer who buys electricity to be consumed as a final product and not for resale.

((~~(dd)~~)) (ff) "Retail provider" means any of the following:

(i) An electric utility as defined in RCW 19.405.020(14);

(ii) Multijurisdictional retail providers;

(iii) Multijurisdictional consumer-owned utilities.

(gg) "Retail sales" means electricity sold to retail end users.

((~~(ee)~~)) (hh) "Specified source of electricity" or "specified source" means a facility, unit, or asset controlling supplier that is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility or a written power contract to procure electricity generated by that facility or unit or from an asset controlling supplier at the time of entry into the transaction to procure electricity. For electricity from a resource dispatched by a centralized electricity market, the reporting entity must indicate in the offer of the electricity to the market that the electricity is available to serve load in Washington. Electricity reported as specified source must be contrac-

ted to a Washington retail provider or must be surplus electricity, as determined by methodologies approved by ecology.

(ii) "Sink" or "sink to load" or "load sink" means the sink identified on the physical path of e-tags, where defined points have been established through the affiliated registry. Exported electricity is disaggregated by the sink on the e-tag, also referred to as the final point of delivery on the e-tag.

((~~(ff)~~)) (jj) "Source of generation" or "generation source" means the generation source identified on the physical path of e-tags, where defined points have been established through the affiliated registry. Imported electricity and wheels are disaggregated by the source on the e-tag, also referred to as the first point of receipt.

((~~(gg)~~)) (kk) "Surplus electricity" means an amount of electricity generated by a resource in excess of the resource's existing obligations to provide electricity to purchasing entities.

(ll) "Tolling agreement" means an agreement whereby a party rents a power plant from the owner. The rent is generally in the form of a fixed monthly payment plus a charge for every megawatt generated, generally referred to as a variable payment.

(mm) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to sell or procure the electricity.

(3) **Data requirements and calculation methods.** The electric power entity who is required to report under WAC 173-441-030(3) of this chapter must comply with the following requirements.

(a) General requirements and content for GHG emissions data reports for electricity importers and exporters.

(i) Greenhouse gas emissions. The electric power entity must report GHG emissions separately for each category of delivered electricity required, in metric tons of CO_2 equivalent (MT of CO_2e), with biogenic CO_2 reported separately, according to the calculation methods in this section.

(ii) Delivered electricity. The electric power entity must report imported and exported electricity in MWh disaggregated by first point of receipt (POR) or final point of delivery, as applicable, and must also separately report imported and exported electricity from unspecified sources ((~~and the energy imbalance market~~)), from centralized electricity markets, and from each specified source. Where applicable, first points of receipt and final points of delivery (POD) must be reported using the standardized code used in e-tags, as well as the full name of the POR/POD.

(iii) Imported electricity from unspecified sources. When reporting imported electricity delivered from unspecified sources, the electric power entity must report for each first point of receipt the following information:

(A) Whether the first point of receipt is located in a linked jurisdiction published on the ecology website;

(B) The amount of electricity from unspecified sources as measured at the first point of delivery in Washington state;

(C) The amount of electricity imports of unspecified electricity that are netted by exports of unspecified electricity to any jurisdiction not covered by a linked program by the same entity within the same hour.

(D) The net amount of imported unspecified electricity after taking into account the requirements in (a)(iii)(C) of this subsection.

(E) GHG emissions, including those associated with transmission losses, as required in this section.

((~~(F) When the unspecified power was obtained from the energy imbalance market.~~))

(iv) Delivered electricity from specified facilities or units. The electric power entity must report all direct delivery of electricity as from a specified source for facilities or units in which they are a generation providing entity (GPE) or have a written power contract to procure electricity. An electric power entity must report imported electricity as from a specified source when the electricity power entity is a GPE of that facility. When reporting imported electricity from specified facilities or units, the electric power entity must disaggregate electricity deliveries and associated GHG emissions by facility or unit and by first point of receipt, as applicable. The reporting entity must also report total GHG emissions and MWh from specified sources and the sum of emissions from specified sources explicitly listed as not covered in chapter 70A.65 RCW, as described in chapter 173-446 WAC. Seller Warranty: The sale or resale of specified source electricity is permitted among entities on the e-tag market path insofar as each sale or resale is for specified source electricity in which sellers have purchased and sold specified source electricity, such that each seller warrants the sale of specified source electricity from the source through the market path. Claims of specified sources of imported electricity, must include the following information:

(A) Measured at busbar. The amount of imported electricity from specified facilities or units as measured at the busbar; and

(B) Not measured at busbar. If the amount of imported electricity deliveries from specified facilities or units as measured at the busbar is not provided, report the amount of imported electricity as measured at the first point of delivery in Washington state, including estimated transmission losses as required in this section and the reason why measurement at the busbar is not known.

(v) Imported electricity from ((~~the energy imbalance~~)) a centralized electricity market. ((~~The reporting entity must separately report power obtained from the energy imbalance market.~~))

(A) For the Energy Imbalance Market only, and for emissions reporting years 2023 through 2026 only, the retail provider located or operating in Washington that receives a delivery of electricity facilitated through the Energy Imbalance Market as defined in (c)(iv) of this subsection is the electricity importer for that electricity for the purposes of this section. In the event that the market operator is able to identify deemed market importers that successfully offer energy that is attributed to Washington before 2026, those identified entities are the deemed market importers beginning in the following calendar year.

(B) Each deemed market importer must separately report all electricity assigned, designated, deemed, or attributed to Washington by an originating centralized electricity market, in a manner designated by ecology.

(C) Each deemed market importer must calculate, report, and cause to be verified on an annual basis the greenhouse gas emissions associated with the electricity which the entity offered that has been designated, deemed, or attributed to Washington.

(vi) Imported electricity supplied by asset-controlling suppliers. The reporting entity must separately report imported electricity

supplied by asset-controlling suppliers recognized by ecology. The reporting entity must:

(A) Report the asset-controlling supplier standardized purchasing-selling entity (PSE) acronym or code, full name, and the ecology identification number;

(B) Report asset-controlling supplier power that was not acquired as specified power, as unspecified power;

(C) Report delivered electricity from asset-controlling suppliers as measured at the first point of delivery in Washington state; and

(D) Report GHG emissions calculated pursuant to this section, including transmission losses.

(E) To claim power from an asset-controlling supplier, the asset-controlling supplier must be identified in one of the following means:

(I) On the physical path of the e-tag as the PSE at the first point of receipt, or in the case of asset-controlling suppliers that are exclusive marketers, as the PSE immediately following the associated generation owner; or

(II) If there is no e-tag associated with the imported electricity, on a long-term contract that identifies the ACS as the relevant provider of that electricity.

(vii) Exported electricity. The electric power entity must report exported electricity in MWh and associated GHG emissions in MT of CO_2e for unspecified sources disaggregated by each final point of delivery outside Washington state, and for each specified source disaggregated by each final point of delivery outside Washington state((~~, as well as~~)). For electricity dispatched by a centralized electricity market, the electric power entity must report any specified electricity sales attributed to market participants outside Washington or exported from the market to an entity outside Washington in MWh and associated GHG emissions in MT of CO_2e for unspecified sources and for each specified source disaggregated by recipient, to the extent this information is available from the centralized electricity market operator. The electric power entity must also report the following information:

(A) Exported electricity as measured at the last point of delivery located in Washington state, if known. If unknown, report as measured at the final point of delivery outside Washington state.

(B) Do not report estimated transmission losses.

(C) Report whether the final point of delivery is located in a linked jurisdiction published on the ecology website.

(D) Report GHG emissions calculated pursuant to this section.

(viii) Exchange agreements. The electric power entity must report delivered electricity under power exchange agreements consistent with imported and exported electricity requirements of this section. Electricity delivered into Washington state under exchange agreements must be reported as imported electricity and electricity delivered out of Washington state under exchange agreements must be reported as exported electricity.

(ix) Verification documentation. The electric power entity must retain for purposes of verification documentation of e-tags, written power contracts, settlements data, and any other reports provided by the market operator to the electric power entity regarding electricity attributed to Washington for which that entity is the deemed market importer, and all other information required to confirm reported electricity procurements and deliveries pursuant to the recordkeeping requirements of WAC 173-441-050.

(x) Electricity generating units and cogeneration units in Washington state. Electric power entities that also operate electricity generating units or cogeneration units located inside Washington state that meet the applicability requirements of WAC 173-441-030(1) must report GHG emissions to ecology under WAC 173-441-120.

(xi) Electricity generating units and cogeneration units outside Washington state. Operators and owners of electricity generating units and cogeneration units located outside Washington state who elect to report to ecology under WAC 173-441-030(5) must fully comply with the reporting and verification requirements of this chapter.

(b) Calculating GHG emissions.

(i) Calculating GHG emissions from unspecified sources. For electricity from unspecified sources, the electric power entity must calculate the annual CO_2 equivalent mass emissions using the ((~~method established in WAC 173-444-040(4) and based on the amount of net imported electricity reported consistent with (a)(iii)(D) of this subsection.~~)) following equation:

$$CO_2e = MWh \times TL \times EF_{unsp} \quad \text{(Eq. 124-1)}$$

Where:

CO_2e	=	Annual CO_2 equivalent mass emissions from the unspecified electricity deliveries at each point of receipt identified (MT of CO_2e).
MWh	=	Megawatt-hours of unspecified electricity deliveries at each point of receipt identified.
EF_{unsp}	=	Default emission factor for unspecified electricity imports.
EF_{unsp}	=	0.428 MT of CO_2e/MWh.
TL	=	Transmission loss correction factor.
TL	=	TL = 1.02 to account for transmission losses between the busbar and measurement at the first point of receipt in Washington.

(ii) Calculating GHG emissions from specified facilities or units. For electricity from specified facilities or units, including electricity that is deemed, designated, assigned, or attributed by a centralized electricity market, the electric power entity must calculate emissions using the following equation:

$$CO_2e = MWh \times TL \times EF_{sp} \quad \text{(Eq. ((~~124-1~~)) 124-2)}$$

Where:

CO_2e	=	Annual CO_2 equivalent mass emissions from the specified electricity deliveries from each facility or unit claimed (MT of CO_2e).
MWh	=	Megawatt-hours of specified electricity deliveries from each facility or unit claimed.

EF_{sp}	=	Facility-specific or unit-specific emission factor published on the ecology website and calculated using total emissions and transactions data as described below. The emission factor is based on data from the year prior to the reporting year.
TL	=	Transmission loss correction factor.
TL	=	1.02 to account for transmission losses associated with generation outside of a Washington state balancing authority, including electricity from a centralized electricity market that does not account for losses in attribution of energy to Washington.
TL	=	1.0 if the reporting entity provides documentation that demonstrates to the satisfaction of a verifier and ecology that transmission losses have been accounted for, or are compensated by using electricity sourced from within Washington state, or for electricity from a centralized electricity market that accounts for a two percent transmission loss factor in the attribution of energy to Washington.

(A) Ecology shall calculate facility-specific or unit-specific emission factors and publish them on the ecology website using the following equation:

EFsp = Esp/EG (Eq. ((~~124-2~~)) 124-3)

Where:

Esp	=	CO_2e emissions for a specified facility or unit for the report year (MT of CO_2e).
EG	=	Net generation from a specified facility or unit for the report year shall be based on data reported to the Energy Information Administration (EIA).

(B) To register a specified unit(s) source of power, the reporting entity must provide to ecology unit level GHG emissions consistent with the data source requirements of this section and net generation data as reported to the EIA, along with contracts for delivery of power from the specified unit(s) to the reporting entity, and proof of direct delivery of the power by the reporting entity as an import to Washington state.

(I) For specified facilities or units whose operators are subject to this chapter or whose owners or operators voluntarily report under this chapter, Esp shall be equal to the sum of CO_2e emissions reported pursuant to this section.

(II) For specified facilities or units whose operators are not subject to reporting under this chapter or whose owners or operators do not voluntarily report under this chapter, but are subject to the U.S. EPA GHG Mandatory Reporting Regulation, Esp shall be based on GHG emissions reported to U.S. EPA pursuant to 40 C.F.R. Part 98. For GHG emissions reported to U.S. EPA pursuant to 40 C.F.R. Part 98, if it is not possible to isolate the emissions that are directly related to electricity production, ecology may calculate Esp based on EIA data.

Emissions from combustion of biomass-derived fuels will be based on EIA data until such time the emissions are reported to U.S. EPA.

(III) For specified facilities or units whose operators are not subject to reporting under this chapter or whose owners or operators do not voluntarily report under this chapter, nor are subject to the U.S. EPA GHG Mandatory Reporting Regulation, Esp is calculated using heat of combustion data reported to the Energy Information Administration (EIA) as shown below.

$$Esp = 0.001 \times \Sigma(Q \times EF) \quad \text{(Eq. ((}\sout{124-3}\text{)) }\underline{124\text{-}4}\text{)}$$

Where:

0.001	=	Conversion factor kg to MT
Q	=	Heat of combustion for each specified fuel type from the specified facility or unit for the report year (MMBtu). For cogeneration, Q is the quantity of fuel allocated to electricity generation consistent with EIA reporting. For geothermal electricity, Q is the steam data reported to EIA (MMBtu).
EF	=	CO_2e emission factor for the specified fuel type as required by this chapter (kg CO_2e/MMBtu). For geothermal electricity, EF is the estimated CO_2 emission factor published by EIA.

(IV) Facilities or units will be assigned an emission factor by the ecology based on the type of fuel combusted or the technology used when a U.S. EPA GHG Report or EIA fuel consumption report is not available, including new facilities and facilities located outside the U.S.

(V) Meter data requirement. For verification purposes, electric power entities shall retain meter generation data to document that the power claimed by the reporting entity was generated by the facility or unit at the time the power was directly delivered.

(VI) A lesser of analysis is applicable to imports from specified sources for which ecology has calculated an emission factor of zero, and for imports from Washington renewable portfolio standard (RPS) eligible resources, excluding the following: Dynamically tagged power deliveries; nuclear power; asset controlling supplier power; and imports from hydroelectric facilities for which an entity's share of metered output on an hourly basis is not established by power contract. A lesser of analysis is required pursuant to the following equation:

$$\text{Sum of Lesser of MWh} = \Sigma HMsp \min(MGsp * Ssp, TGsp) \quad \text{(Eq. ((}\sout{124-4}\text{)) }\underline{124\text{-}5}\text{)}$$

Where:

ΣHMsp	=	Sum of the Hourly Minimum of MGsp and TGsp (MWh).
MGsp	=	Metered facility or unit net generation (MWh).
Ssp	=	Entity's share of metered output, if applicable.
TGsp	=	Tagged or transmitted energy at the transmission or subtransmission level imported to Washington (MWh).

(iii) Calculating GHG emissions of imported electricity supplied by asset-controlling suppliers. Based on annual reports submitted to

ecology pursuant to WAC 173-441-070(3), ecology will calculate and publish on the ecology website the system emission factor for all asset-controlling suppliers recognized by the ecology. The reporting entity must calculate emissions for electricity supplied using the following equation:

$$CO_2e = MWh \times TL \times EF_{acs} \quad \text{(Eq. ((~~124-5~~)) 124-6)}$$

Where:

CO_2	=	Annual CO_2 equivalent mass emissions from the specified electricity deliveries from ecology-recognized asset-controlling suppliers (MT of CO_2e).
MWh	=	Megawatt-hours of specified electricity deliveries.
EF_{ACS}	=	Asset-Controlling Supplier system emission factor published on the ecology website (MT CO_2e/MWh). Ecology will assign the system emission factors for all asset-controlling suppliers based on a previously verified GHG report submitted to ecology pursuant to WAC 173-441-070(3). The supplier-specific system emission factor is calculated annually by ecology. The calculation is derived from data contained in annual reports submitted that have received a positive or qualified positive verification statement. The emission factor is based on data from two years prior to the reporting year.
TL	=	Transmission loss correction factor.
TL	=	1.02 when deliveries are not reported as measured at a first point of receipt located within the balancing authority area of the asset-controlling supplier.
TL	=	1.0 when deliveries are reported as measured at a first point of receipt located within the balancing authority area of the asset-controlling supplier.

Ecology must calculate the system emission factor for asset-controlling suppliers using the following equations:

$$EFACS = \text{Sum of System Emissions MT of } CO_2e / \text{Sum of System MWh} \quad \text{(Eq. ((~~124-6~~)) 124-7)}$$

$$\text{Sum of System Emissions, MT of } CO_2e = \Sigma Easp + \Sigma(PEsp * EFsp) + \Sigma(PEunsp * EFunsp) - \Sigma(SEsp * EFsp) \quad \text{(Eq. ((~~124-7~~)) 124-8)}$$

$$\text{Sum of System MWh} = \Sigma EGasp + \Sigma PEsp + \Sigma PEunsp - \Sigma SEsp \quad \text{(Eq. ((~~124-8~~)) 124-9)}$$

Where:

ΣEasp	=	Emissions from owned facilities. Sum of CO_2e emissions from each specified facility/unit in the asset-controlling supplier's fleet (MT of CO_2e).
ΣEGasp	=	Net generation from owned facilities. Sum of net generation for each specified facility/unit in the asset-controlling supplier's fleet for the data year as reported to ecology under this chapter (MWh).
PEsp	=	Electricity purchased from specified sources. Amount of electricity purchased wholesale and taken from specified sources by the asset-controlling supplier for the data year as reported to ecology under this chapter (MWh).
PEunsp	=	Electricity purchased from unspecified sources. Amount of electricity purchased wholesale from unspecified sources by the asset-controlling supplier for the data year as reported to ecology under this chapter (MWh).
SEsp	=	Electricity sold from specified sources. Amount of wholesale electricity sold from specified sources by the asset-controlling supplier for the data year as reported to ecology under this chapter (MWh).
EFsp	=	CO_2e emission factor as defined for each specified facility or unit calculated consistent with (b)(ii) of this subsection (MT CO_2e/MWh).
EFunsp	=	Default emission factor for unspecified sources calculated consistent with (b)(i) of this subsection (MT CO_2e/MWh).

(iv) Calculating GHG emissions of imported electricity for multijurisdictional retail providers. Multijurisdictional retail providers must include emissions and megawatt-hours in the terms below from facilities or units that contribute to a common system power pool. Multijurisdictional retail providers do not include emissions or megawatt-hours in the terms below from facilities or units allocated to serve retail loads in designated states pursuant to a cost allocation methodology approved by the Washington state utilities and transportation commission and the utility regulatory commission of at least one additional state in which the multijurisdictional retail provider provides retail electric service. For multijurisdictional consumer-owned utilities, the cost allocation methodology must be approved by its governing board. Multijurisdictional retail providers must calculate emissions that have a compliance obligation using the following equation:

$$CO_2e_{linked} = (MWhR \times TLR - MWhWSP\text{-}WA - EGWA) \times EFMJRP\text{-}notWA + MWhSP\text{-}notWA \times TLWSP \times EFunsp - CO_2e \quad \text{(Eq. ((}\sout{124-9}\text{)) 124-10)}$$

Where:

CO_2e	=	Annual CO_2e mass emissions of imported electricity (MT of CO_2e).

MWhR	=	Total electricity procured by multijurisdictional retail provider to serve its retail customers in Washington, reported as retail sales for Washington state service territory, MWh.
MWhWSP-WA	=	Wholesale electricity procured in Washington state by multijurisdictional retail provider to serve its retail customers in Washington state, as determined by the first point of receipt on a e-tag and pursuant to a cost allocation methodology approved by the Washington state utilities and transportation commission (UTC) and the utility regulatory commission of at least one additional state in which the multijurisdictional retail provider provides retail electric service, MWh. For multijurisdictional consumer-owned utilities, the cost allocation methodology must be approved by its governing board.
MWhWSP-not WA	=	Wholesale electricity imported into Washington state by multijurisdictional retail provider with a final point of delivery in Washington state and not used to serve its Washington state retail customers, MWh.
EFMJRP-not WA	=	Multijurisdictional retail provider system emission factor for out-of-state generation calculated by ecology and consistent with a cost allocation methodology approved by the Washington state utilities and transportation commission and the utility regulatory commission of at least one additional state in which the multijurisdictional retail provider provides retail electric service. For multijurisdictional consumer-owned utilities, the cost allocation methodology must be approved by its governing board.
EFunsp	=	Default emission factor for unspecified sources calculated consistent with this section (MT CO_2e/MWh).
EGWA	=	Net generation measured at the busbar of facilities and units located in Washington state that are allocated to serve its retail customers in Washington state pursuant to a cost allocation methodology approved by the Washington state utilities and transportation commission and the utility regulatory commission of at least one additional state in which the multijurisdictional retail provider provides retail electric service, MWh. For multijurisdictional consumer-owned utilities, the cost allocation methodology must be approved by its governing board.
TL	=	Transmission loss correction factor.
TL WSP	=	1.02 for transmission losses applied to wholesale power.
TL R	=	Estimate of transmission losses from busbar to end user reported by multijurisdictional retail provider.
CO_2e linked	=	Annual CO_2e mass emissions recognized by ecology pursuant to linkage under chapter 70A.65 RCW, as described in chapter 173-446 WAC (MT of CO_2e).

(c) Additional requirements for retail providers, excluding multijurisdictional retail providers. Retail providers must include the following information in the GHG emissions data report for each report year, in addition to the information identified in (a)(i), (ii), and (vii) of this subsection.

(i) Retail providers must report Washington state retail sales. A retail provider who is required only to report retail sales may choose not to apply the verification requirements specified in WAC 173-441-085, if the retail provider deems the emissions data report nonconfidential.

(ii) Retail providers may elect to report the subset of retail sales attributed to the electrification of shipping ports, truck stops, and motor vehicles if metering is available to separately track these sales from other retail sales.

((~~(d)~~)) (iii) Retail providers that report as electricity importers or exporters also must separately report electricity imported from specified and unspecified sources by other electric power entities to serve their load, designating the electricity importer. In addition, all imported electricity transactions documented by e-tags where the retail provider is the PSE at the sink must be reported.

((~~(e)~~)) (iv) Retail providers must report net purchases of electricity from centralized electricity markets, based on annual totals of electricity purchased in MWh from each separate centralized electricity market.

(d) Additional requirements for multijurisdictional retail providers. Multijurisdictional retail providers that provide electricity into Washington state at the distribution level must include the following information in the GHG emissions data report for each report year, in addition to the information identified elsewhere in this section.

(i) A report of the electricity transactions and GHG emissions associated with the common power system or contiguous service territory that includes consumers in Washington state. This includes the requirements in this section as applicable for each generating facility or unit in the multijurisdictional retail provider's fleet;

(ii) The multijurisdictional retail provider must include in its emissions data report wholesale power purchased and taken (MWh) from specified and unspecified sources and wholesale power sold from specified sources according to the specifications in this section, and as required for ecology to calculate a supplier-specific emission factor;

(iii) Total retail sales (MWh) by the multijurisdictional retail provider in the contiguous service territory or power system that includes consumers in Washington state;

(iv) Retail sales (MWh) to Washington state customers served in Washington state's portion of the service territory;

(v) Retail sales derived from ((~~the energy imbalance~~)) each centralized electricity market;

(vi) GHG emissions associated with the imported electricity, including both Washington state retail sales and wholesale power imported into Washington state from the retail provider's system, according to the specifications in this section;

(vii) Multijurisdictional retail providers that serve Washington state load must claim as specified power all power purchased or taken from facilities or units in which they have operational control or an ownership share or written power contract;

(viii) Multijurisdictional retail providers that serve Washington state load may elect to exclude information listed in this section when registering claims to specified power from facilities located outside Washington state and participating in the Federal Energy Regulatory Commission's PURPA Qualifying Facility program.

((~~(f)~~)) (e) Additional requirements for asset-controlling suppliers. Owners or operators of electricity generating facilities or exclusive marketers for certain generating facilities may apply for an asset-controlling supplier designation from ecology. Approved asset-controlling suppliers may request that ecology calculate or adopt a supplier-specific emission factor pursuant to this section. To apply for asset-controlling supplier designation, the applicant must:

(i) Meet the requirements in this chapter, including reporting pursuant as applicable for each generating facility or unit in the supplier's fleet;

(ii) Include in its emissions data report wholesale power purchased and taken (MWh) from specified and unspecified sources and wholesale power sold from specified sources according to the specifications in this section, and as required for ecology to calculate a supplier-specific emission factor;

(iii) Retain for verification purposes documentation that the power sold by the supplier originated from the supplier's fleet of facilities and either that the fleet is under the supplier's operational control or that the supplier serves as the fleet's exclusive marketer;

(iv) Provide the supplier-specific ecology identification number to electric power entities who purchase electricity from the supplier's system.

(v) To apply for and maintain asset-controlling supplier status, the entity shall submit as part of its emissions data report the following information, annually:

(A) General business information, including entity name and contact information;

(B) List of officer names and titles;

(C) Data requirements as prescribed by ecology;

(D) A list and description of electricity generating facilities for which the reporting entity is a ((~~first jurisdiction deliverer~~)) deemed market importer; and

(E) An attestation, in writing and signed by an authorized officer of the applicant, as follows:

(I) "I certify under penalty of perjury under the laws of the State of Washington that I am duly authorized by (name of entity) to sign this attestation on behalf of (name of entity), that (name of entity) meets the definition of an asset-controlling supplier as specified in this section and that the information submitted herein is true, accurate, and complete."

(II) Asset-controlling suppliers must annually adhere to all reporting and verification requirements of this chapter, or be removed from asset-controlling supplier designation. Asset-controlling suppliers will also lose their designation if they receive an adverse verification statement, but may reapply in the following year for redesignation.

((~~(g)~~)) (f) Requirements for claims of specified sources of electricity. Each reporting entity claiming specified facilities or units for imported or exported electricity, including deemed market importers, must register its anticipated specified sources with ecology as part of their greenhouse gas report to obtain associated emission factors calculated by ecology for use in the emissions data report required to be submitted by the report submission due date in WAC 173-441-050 (2)(a). If an operator fails to register a specified source by ((~~the registration due date in WAC 173-441-060(4)~~)) February 1st for sources used the previous year, the operator must use the emission factor provided by ecology for a specified facility or unit in the emissions data report required to be submitted by the report submission due date in WAC 173-441-050 (2)(a). Each reporting entity claiming specified facilities or units for imported or exported electricity must also meet requirements in the emissions data report.

(i) Registration information for specified sources. The following information is required:

(A) The facility names and, for specification to the unit level, the facility and unit names.

(B) For sources with a previously assigned ecology identification number, the ecology facility or unit identification number or supplier number published on ecology's website. For newly specified sources, ecology will assign a unique identification number.

(C) If applicable, the facility and unit identification numbers as used for reporting to the U.S. EPA Acid Rain Program, U.S. EPA pursuant to 40 C.F.R. Part 98, U.S. Energy Information Administration, Federal Energy Regulatory Commission's PURPA Qualifying Facility program, as applicable.

(D) The physical address of each facility, including jurisdiction.

(E) Provide names of facility owner and operator.

(F) The percent ownership share and whether the facility or unit is under the electricity importer's operational control.

(G) Total facility or unit gross and net nameplate capacity when the electricity importer is a GPE.

(H) Total facility or unit gross and net generation when the electricity importer is a GPE.

(I) Start date of commercial operation and, when applicable, date of repowering.

(J) GPEs claiming additional capacity at an existing facility must include the implementation date, the expected increase in net generation (MWh), and a description of the actions taken to increase capacity.

(K) Designate whether the facility or unit is a newly specified source, a continuing specified source, or was a specified source in the previous report year that will not be specified in the current report year.

(L) Provide the primary technology or fuel type as listed below:

(I) Variable renewable resources by type, defined for purposes of this chapter as pure solar, pure wind, and run-of-river hydroelectricity;

(II) Hybrid facilities such as solar thermal;

(III) Hydroelectric facilities ≤ 30 MW, not run-of-river;

(IV) Hydroelectric facilities ≥ 30 MW;

(V) Geothermal binary cycle plant or closed loop system;

(VI) Geothermal steam plant or open loop system;

(VII) Units combusting biomass-derived fuel, by primary fuel type;

(VIII) Nuclear facilities;

(IX) Cogeneration by primary fuel type;

(X) Fossil sources by primary fuel type;

(XI) Co-fired fuels;

(XII) Municipal solid waste combustion;

(XIII) Other.

(ii) Additional information for specified sources. For each claim to a specified source of electricity, the electricity importer must indicate whether one or more of the following descriptions applies:

(A) Deliveries from new facilities. Specified source of electricity is first registered pursuant to this section and delivered by an electricity importer within 12 months of the start date of commercial operation and the electricity importer making a claim in the current data year is either a GPE or purchaser of electricity under a written power contract;

(B) Deliveries from existing facilities with additional capacity. Specified source of electricity is first registered pursuant to this section and delivered by a GPE within 12 months of the start date of an increase in the facility's generating capacity due to increased efficiencies or other capacity increasing actions.

(iii) Additional information for deemed market importers for claims of specified sources of electricity. To receive a positive verification statement upon verification for claims of specified imports from a centralized electricity market the electric power entity must be able to demonstrate to ecology's satisfaction that the market operator designated, assigned, deemed, or otherwise attributed energy from those resources to Washington. Proof of such attribution may be demonstrated upon request by settlement records or other information such as that provided by the market operator to the market participant showing that energy offered by the deemed market importer was attributed to Washington. This provision of records and other information must be submitted to ecology in a manner designated by ecology by May 1st for electricity transactions involving centralized electricity markets in the previous calendar year.

(4) **Recordkeeping.** GHG inventory program for electric power entities that import or export electricity. In lieu of a GHG monitoring plan, electric power entities that import or export electricity must prepare GHG inventory program documentation that is maintained and available for verifier review and ecology audit pursuant to the recordkeeping requirements of this section. The following information is required:

(a) Information to allow the verification team to develop a general understanding of entity boundaries, operations, and electricity transactions;

(b) Reference to management policies or practices applicable to reporting pursuant to this section;

(c) List of key personnel involved in compiling data and preparing the emissions data report;

(d) Training practices for personnel involved in reporting delivered electricity and responsible for data report certification, including documented training procedures;

(e) Query of e-tag source data to determine the quantity of electricity (MWh) imported, exported, and wheeled for transactions in which they are the purchasing-selling entity on the last physical path segment that crosses the border of Washington state, access to review the raw e-tag data, a tabulated summary, and query description;

(f) Reference to other independent or internal data management systems and records, including written power contracts and associated verbal or electronic records, full or partial ownership, invoices, reports and statements from market operators, and settlements data used to document whether reported transactions are specified or unspecified and whether the requirements for adjustments to covered emissions of chapter 70A.65 RCW, as described in chapter 173-446 WAC are met;

(g) Description of steps taken and calculations made to aggregate data into reporting categories required pursuant to this section;

(h) Records of preventive and corrective actions taken to address verifier and ecology findings of past nonconformances and material misstatements;

(i) Log of emissions data report modifications made after initial certification; and

(j) A written description of an internal audit program that includes emissions data report review and documents ongoing efforts to improve the GHG inventory program.

OTS-5374.1

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. For those terms not listed in this section, the definitions found in chapters 173-441 and 173-446A WAC apply in this chapter.

"Additional" means, in the context of the offset provisions of this rule, greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a business-as-usual scenario.

"Adverse offset verification statement" means an offset verification statement rendered by a verification body attesting that the verification body cannot say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement, or that it cannot attest that the offset project data report conforms to the requirements of this chapter or applicable compliance offset protocol.

"Affiliated registered entities" means registered entities in a direct or indirect corporate association.

"Aggregation" means, in the context of offsets, a grouping of offset projects carried out according to the same compliance offset protocol and under the responsibility of the same offset project developer or operator.

"Allowance" means an authorization to emit up to one metric ton of carbon dioxide equivalent.

"Allowance price containment reserve" means an account maintained by ecology with allowances available for sale through separate reserve auctions at predefined prices to assist in containing compliance costs for covered and opt-in entities in the event of unanticipated high costs for compliance instruments.

"Annual allowance budget" means the total number of GHG allowances allocated for auction and distribution for one calendar year by ecology.

"Asset controlling supplier" or "ACS" has the same meaning as in chapter 173-441 WAC.

"Auction" means the process of selling GHG allowances by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

"Auction floor price" means a price for allowances below which bids at auction are not eligible to be accepted.

"Auction purchase limit" means the limit on the number of allowances one registered entity or a group of affiliated registered entities may purchase from the share of allowances sold at an auction.

"Auction settlement price" means the price announced by ecology at the conclusion of each auction that all successful bidders pay for each allowance.

"Authorized project designee" means an entity authorized by an offset project operator to act on behalf of the offset project operator. The authorized project designee must be a primary account representative or alternate account representative on the offset project operator's holding account.

"Balancing authority" means the responsible party that integrates resource plans ahead of time, maintains load-interchange generation balance within a balancing authority area, and supports interconnection frequency in real time.

"Balancing authority area" means the collection of generation, transmission, and load within the metered boundaries of a balancing authority. A balancing authority maintains load-resource balance within this area.

"Banking" means the holding of compliance instruments from one compliance period for the purpose of sale or use for compliance in a future compliance period.

"Best available technology" or "BAT" means a technology or technologies that will achieve the greatest reduction in GHG emissions, taking into account the fuels, processes, and equipment used by facilities to produce goods of comparable type, quantity, and quality. Best available technology must be technically feasible, commercially available, economically viable, not create excessive environmental impacts, and be compliant with all applicable laws while not changing the characteristics of the good being manufactured.

"Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of municipal wastewater and industrial waste, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

"Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 percent lower GHG emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute.

"Bundled transaction" means the retail sale of two or more products, except real property or services to real property, where:

(a) The products are otherwise distinct and identifiable; and

(b) The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products in which the sale price varies or is negotiable, based on the selection by the purchaser of the products included in the transaction.

"Business-as-usual scenario" means, in the context of offsets, the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends.

"Cap and invest consultant or advisor" means an individual or party that meets the criteria in WAC 173-446-056.

"Carbon dioxide equivalents" or "CO_2e" has the same meaning as in chapter 173-441 WAC.

"Carbon dioxide removal" or "greenhouse gas removal" means deliberate human activities removing carbon dioxide from the atmosphere and

durably storing it in geological, terrestrial, or ocean reservoirs, or in products. "Carbon dioxide removal" includes existing and potential anthropogenic enhancement of biological or geochemical sinks and including, but not limited to, carbon mineralization and direct air capture and storage.

"Centralized electricity market" has the same meaning as in chapter 173-441 WAC.

"Closed electricity importer" means an electricity importer that has elected to permanently stop providing or importing electric power into Washington.

"Closed facility" means a facility at which the current owner or operator has elected to permanently stop production and will no longer be an emissions source.

"Closed supplier" means a supplier that has elected to permanently stop supplying any of the materials that trigger coverage as a supplier under chapter 70A.65 RCW and this chapter.

"Compliance instrument" means an allowance or offset credit issued by ecology or by an external GHG emissions trading program to which Washington has linked its cap and invest program. One compliance instrument is equal to one metric ton of carbon dioxide equivalent.

"Compliance obligation" means the requirement to submit to ecology the number of compliance instruments equivalent to a covered or opt-in entity's covered emissions during the compliance period.

"Compliance offset protocol" means an offset protocol adopted by ecology.

"Compliance period" means the four-year period for which the compliance obligation is calculated for covered entities.

"Conservative" means, in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements.

"Cost burden" means the impact on rates or charges to customers of electric utilities in Washington for the incremental cost of electricity service to serve load due to the compliance cost for GHG emissions caused by the program. Cost burden includes administrative costs from the utility's participation in the program.

"Covered emissions" means the emissions described in WAC 173-446-040 for which a covered entity has a compliance obligation under this chapter.

"Covered entity" means a person that is designated by ecology as subject to this chapter as specified in WAC 173-446-030 or 173-446-060. Each facility, supplier, or first jurisdictional deliverer serving as an electricity importer is a separate covered entity.

"Crediting baseline" refers to the reduction of absolute GHG emissions below the business-as-usual scenario after the imposition of greenhouse gas emission reduction requirements or incentives.

"Crediting period" means the predetermined period of time for which an offset project will remain eligible to be issued ecology offset credits or registry offset credits for verified GHG emission reductions or GHG removal enhancements.

"Curtailed electric power entity" means an electric power entity at which the owner or operator has temporarily suspended operations but for which the owner or operator maintains any necessary permits and retains the option to resume business if conditions become amenable.

"Curtailed facility" means a facility at which the owner or operator has temporarily suspended production but for which the owner or operator maintains operating permits and retains the option to resume production if conditions become amenable.

"Curtailed supplier" means a supplier at which the owner or operator has temporarily suspended operations but for which the owner or operator maintains any necessary permits and retains the option to resume business if conditions become amenable.

"Deemed market importer" has the same meaning as in WAC 173-441-124.

"Direct corporate association" means a group of parties that meet the requirements in WAC 173-446-105 to be a direct corporate association.

"Direct environmental benefits in the state" means, in the context of offsets, environmental benefits accomplished through the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of the release of any pollutant that could have an adverse impact on land or waters of the state.

"Direct GHG emission reduction" means a reduction of GHG emissions from applicable GHG emission sources, GHG sinks, or GHG reservoirs that are under control of an offset project operator or authorized project designee.

"Direct GHG removal enhancement" means a GHG removal enhancement from applicable GHG emission sources, GHG sinks, or GHG reservoirs under control of the offset project operator or authorized project designee.

"Ecology" means the Washington state department of ecology or its agents, including the auction administrator and the financial services administrator retained by ecology pursuant to RCW 70A.65.100(3).

"Electric power entity" has the same meaning as in chapter 173-441 WAC.

"Electricity importer" has the same meaning as in chapter 173-441 WAC.

"Emissions containment reserve allowance" means a conditional allowance that is withheld from sale at an auction by ecology or its agent to secure additional emissions reductions in the event prices fall below the emissions containment reserve trigger price, or any other allowance placed into the emissions containment reserve.

"Emissions containment reserve trigger price" means the price below which allowances will be withheld from sale at an auction by ecology, as determined by ecology by rule unless ecology has suspended the emissions containment reserve trigger price.

"Emissions threshold" means the GHG emission level at or above which a person has a compliance obligation under this chapter.

"Emissions year" means the calendar year in which GHG emissions occur.

"Environmental benefits" means activities that:

(a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;

(b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or

(c) Meet a community need formally identified to a covered agency by an overburdened community or vulnerable population that is consistent with the intent of chapter 70A.02 RCW.

"Environmental harm" means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, or projected:

(a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;

(b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change;

(c) Loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods; or

(d) Health and economic impacts from climate change.

"Environmental impacts" means environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

"Environmental justice council" means the council established in RCW 70A.02.110.

"External GHG emissions trading program" or "external GHG ETS" means a government program, other than Washington's program created in this chapter, that restricts GHG emissions from sources outside of Washington and that allows emissions trading.

"Facility" has the same meaning as in chapter 173-441 WAC.

"Federal power marketing administration" means any of the four federal power marketing administrations that operate electric systems and sell the electrical output of federally owned and operated hydroelectric dams in the United States.

"First jurisdictional deliverer" means the owner or operator of an electric generating facility in Washington state or an electricity importer.

"Forest buffer account" means a holding account for ecology offset credits issued to forest offset projects. It is used as a general insurance mechanism against unintentional reversals, for all forest offset projects listed under a compliance offset protocol.

"Forest owner" means the owner of any interest in the real property on which a forest offset project is located, excluding government agency or other third-party beneficiaries of conservation easements. Generally, a forest owner is the owner in fee of the real property on which a forest offset project is located. In some cases, one party may be the owner in fee while another party may have an interest in the trees or the timber on the property, in which case all parties with interest in the real property are collectively considered the forest owners; however, a single forest owner must be identified as the offset project operator.

"General market participant" means a registered entity that is not identified as a covered entity or an opt-in entity that is registered in the program registry and intends to purchase, hold, sell, or voluntarily retire compliance instruments.

"Greenhouse gas" or "GHG" has the same meaning as in chapter 173-441 WAC.

"Greenhouse gas emission reduction" or "GHG emission reduction" or "greenhouse gas reduction" or "GHG reduction" means a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

"Greenhouse gas emissions source" or "GHG emissions source" means, in the context of offsets, any type of emitting activity that releases greenhouse gases into the atmosphere.

"Greenhouse gas removal enhancement" or "GHG removal enhancement" means a calculated increase in GHG removals relative to a project baseline.

"Greenhouse gas reservoir" or "GHG reservoir" means a physical unit or component of the biosphere, geosphere, or hydrosphere with the capability to store, accumulate, or release a GHG removed from the atmosphere by a GHG sink or a GHG captured from a GHG emission source.

"Greenhouse gas sink" or "GHG sink" means a physical unit or process that removes a GHG from the atmosphere.

"Holding limit" means the maximum number of allowances that may be held for use or trade by a registered entity at any one time.

"Imported electricity" has the same meaning as in chapter 173-441 WAC.

"Indirect corporate association" means a group of parties that meet the requirements in WAC 173-446-105 to be an indirect corporate association.

"Initial crediting period" means the crediting period that begins with the first day of the first reporting period which receives a positive offset or qualified positive offset verification statement and has that offset verification statement approved by ecology.

"Intentional reversal" means any reversal, except as provided below, which is caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary, or caused by approved growth models overestimating carbon stocks. A reversal caused by an intentional back burn set by, or at the request of, a local, state, or federal fire protection agency for the purpose of protecting forestlands from an advancing wildfire that began on another property through no negligence, gross negligence, or willful misconduct of the forest owner is not considered an intentional reversal but, rather, an unintentional reversal. Receiving adverse offset verification statements on two consecutive offset verifications after the end of the final crediting period will be considered an intentional reversal.

"Lead offset verifier" means a party that has met all the requirements in WAC 173-441-085(7) and who may act as the lead verifier of an offset verification team providing offset verification services or as a lead verifier providing an independent review of offset verification services rendered.

"Lead offset verifier independent reviewer" or "independent offset reviewer" means a lead offset verifier within a verification body who has not participated in conducting offset verification services for an offset project developer or authorized project designee for the current offset project data report and who provides an independent review of offset verification services rendered for an offset project developer or authorized project designee as required in WAC 173-446-530. The independent reviewer is not required to also meet the requirements for a sector specific or offset project specific verifier.

"Leakage" means a reduction in emissions of GHGs within the state that is offset by a directly attributable increase in GHG emissions outside the state and outside the geography of another jurisdiction with a linkage agreement with Washington.

"Limits" means the GHG emissions reductions required by RCW 70A.45.020.

"Linkage" means a bilateral or multilateral decision under a linkage agreement between GHG market programs to accept compliance instruments issued by a participating jurisdiction to meet the obligations of regulated entities in a partner jurisdiction and to otherwise coordinate activities to facilitate operation of a joint market.

"Linkage agreement" means a nonbinding agreement that connects two or more GHG market programs and articulates a mutual understanding of how the participating jurisdictions will work together to facilitate a connected GHG market.

"Linked jurisdiction" means a jurisdiction with which Washington has entered into a linkage agreement.

"Market position" means the combination of the current and/or expected holdings of compliance instruments by a registered entity and the current and/or expected covered emissions of that registered entity.

"Market sensitive information" means information related to registered entities, or their participation in the cap and invest program that is not otherwise publicly available, and for which ecology determines that the public interest in disclosure is outweighed by the public interest served by maintaining the confidentiality of such information, on the basis that its disclosure would be reasonably expected to have an effect on the price or value of allowances or offset credits and/or enable a registered entity to engage in market manipulation such as bidder collusion, market cornering, or extortion of other market participant. "Market sensitive information" does not include data reported under chapter 173-441 WAC, except to the extent that the disclosure of such data for a particular emission year at any time prior to November 15th of the following calendar year would enable a registered entity to engage in market manipulation. "Market sensitive information" also does not include anonymized information about the contents of registered entities' holding accounts that is publicly displayed pursuant to RCW 70A.65.090 (7)(b), except to the extent that the disclosure of such information that is less than 45 days old would enable a registered entity to engage in market manipulation.

"Multijurisdictional consumer-owned utility" has the same meaning as in chapter 173-441 WAC.

"Multijurisdictional electric company" has the same meaning as in chapter 173-441 WAC.

"NERC e-tag" or "e-tag" has the same meaning as in chapter 173-441 WAC.

"Offset credit" means a tradable compliance instrument that represents an emissions reduction or emissions removal of one metric ton of carbon dioxide equivalent.

"Offset material misstatement" means a discrepancy, omission, misreporting, or aggregation of the three, identified in the course of offset verification services that leads an offset verification team to conclude that an offset project data report contains errors resulting in an overstatement of the reported total GHG emission reductions or GHG removal enhancements by greater than five percent. Discrepancies, omissions, or misreporting, or an aggregation of the three, that result in an understatement of total reported GHG emission reductions or GHG removal enhancements in the offset project data report is not an offset material misstatement.

"Offset project" means a project that reduces or removes GHG that are not covered emissions under this chapter.

"Offset project boundary" is defined by and includes all GHG emission sources, GHG sinks, and GHG reservoirs that are affected by

an offset project and under control of the offset project operator or authorized project designee. GHG emissions sources, GHG sinks or GHG reservoirs not under control of the offset project operator or authorized project designee are not included in the offset project boundary.

"Offset project data report" means the report prepared by an offset project operator or authorized project designee each reporting period that provides the information, documentation, and attestations required by this chapter or a compliance offset protocol. An unattested report is not a valid offset project data report, and therefore cannot be used to satisfy any deadlines regarding submittal of an offset project data report.

"Offset project listing" or "listing" means the information, documentation, and attestations required by this chapter or a compliance offset protocol that an offset project operator or authorized project designee has submitted to ecology or an offset project registry, and that has been reviewed for completeness by ecology and/or the offset project registry and publicly listed by ecology or the offset project registry for an initial or renewed crediting period. An offset project listing must include the attestations required by this chapter in order to be considered complete by ecology or the offset project registry.

"Offset project operator" means the party(ies) with legal authority to implement the offset project. Only a primary account representative or alternate account representative may sign listing documents, an offset project data report, a request for issuance, or attestations on behalf of the offset project operator.

"Offset project registry" means a party that meets the requirements of this chapter and is approved by ecology that lists offset projects, collects offset project data reports, facilitates verification of offset project data reports, and issues registry offset credits for offset projects being implemented using a compliance offset protocol.

"Offset protocols" means a set of procedures and standards to quantify GHG reductions or GHG removals achieved by an offset project.

"Offset verification" means a systematic, independent, and documented process for evaluation of an offset project operator's or authorized project designee's offset project data report against ecology compliance offset protocols and this chapter for calculating and reporting project baseline emissions, project emissions, GHG reductions, and GHG removal enhancements.

"Offset verification body" means a firm accredited or recognized by ecology, which is able to render an offset verification statement and provide offset verification services for offset project operators or authorized project designees subject to providing an offset project data report under this chapter.

"Offset verification services" means services provided during offset verification, including reviewing an offset project operator's or authorized project designee's offset project data report, verifying its accuracy according to the standards specified in WAC 173-446-535 and the applicable compliance offset protocol, assessing the offset project operator's or authorized project designee's compliance with this chapter and applicable compliance offset protocol, and submitting an offset verification statement to ecology or an offset project registry.

"Offset verification statement" means the final statement rendered by a verification body attesting whether an offset project operator's or authorized project designee's offset project data report is

free of an offset material misstatement, and whether the offset project data report conforms to the requirements of this chapter and applicable compliance offset protocol, and containing the attestations required pursuant to this chapter.

"Offset verification team" means all parties working for a verification body, including all subcontractors, to provide offset verification services for an offset project operator or authorized project designee.

"Opt-in entity" means a party responsible for greenhouse gas emissions that is not a covered entity but voluntarily participates in the program as authorized under RCW 70A.65.090(3).

"Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways, which may result in significant disparate adverse health outcomes or effects.

"Overburdened community" includes, but is not limited to:

(a) Highly impacted communities as defined in RCW 19.405.020;

(b) Communities located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

(c) Populations, including Native Americans or immigrant populations, who may be exposed to environmental contaminants and pollutants outside of the geographic area in which they reside based on the populations' use of traditional or cultural foods and practices, such as the use of resources, access to which is protected under treaty rights in ceded areas, when those exposures in conjunction with other exposures may result in disproportionately greater risks, including risks of certain cancers or other adverse health effects and outcomes.

(d) Overburdened communities identified by ecology shall include the same communities as those identified by ecology through its process for identifying overburdened communities under RCW 70A.02.010.

"Party" means an individual, person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.

"Permanent" means, in the context of offsets, either that GHG reductions and GHG removal enhancements are not reversible, or when GHG reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least the length of time specified in the associated offset protocol.

"Person" includes: An owner or operator of a facility; a supplier; or an electric power entity.

"Point of delivery" has the same meaning as in chapter 173-441 WAC.

"Positive offset verification statement" means an offset verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement and that the offset project data report conforms to the requirements of this chapter and applicable compliance offset protocol.

"Price ceiling unit" means a unit issued at a fixed price by ecology for the purpose of limiting price increases and funding further investments in GHG reductions.

"Program" means the GHG emissions cap and invest program created by chapter 70A.65 RCW and implemented pursuant to this chapter.

"Program registry" means the data system in which covered entities, opt-in entities, and general market participants are registered and in which compliance instruments are recorded and tracked.

"Project baseline" means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project's GHG emission sources, GHG sinks, or GHG reservoirs within the offset project boundary.

"Qualified positive offset verification statement" means an offset verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement, but the offset project data report may include one or more nonconformance(s) with this chapter and applicable compliance offset protocol which do not result in an offset material misstatement. Nonconformance, in this context, does not include disregarding the explicit requirements of this chapter or applicable compliance offset protocol and substituting alternative requirements not approved by ecology.

"Registered entity" means a covered entity, opt-in entity, or general market participant that has completed the process for registration in the program registry.

"Registration applicant" means a covered entity, opt-in entity, or general market participant that is applying to register in the program registry.

"Registry offset credit" means a credit issued by an offset project registry for a GHG reduction or GHG removal enhancement of one metric ton of CO_2e.

"Reporter" has the same meaning as in chapter 173-441 WAC.

"Reporting period" means, in the context of offsets, the period of time for which an offset project operator or authorized project designee quantifies and reports GHG reductions or GHG removal enhancements covered in an offset project data report. An offset project's reporting period is established in the project listing documentation, but may be modified pursuant to WAC 173-446-525(11).

"Retail electric load" has the same meaning as specified in RCW 19.405.020.

"Retire" means to permanently remove a compliance instrument such that the compliance instrument may never be sold, traded, used for compliance, or otherwise used again.

"Retirement account" means the account to which ecology transfers compliance instruments that have been surrendered for compliance.

"Sector" means an area of the economy in which a grouping of sources of greenhouse gas emissions share the same or related activity, product, or service.

"Sequestration" means the removal of carbon dioxide from the atmosphere and storage of carbon in GHG sinks or GHG reservoirs through physical or biological processes.

"Specified source of electricity" or "specified source" has the same meaning as in chapter 173-441 WAC.

"Supplier" has the same meaning as in chapter 173-441 WAC.

"Tier 1 price" means the lower of the two prices set by ecology for allowances auctioned from the allowance price containment reserve.

"Tier 2 price" means the higher of the two prices set by ecology for allowances auctioned from the allowance price containment reserve.

"Total program baseline" means the total of covered greenhouse gas emissions from covered entities as established in WAC 173-446-200.

"Tribal lands" has the same meaning as defined in RCW 70A.02.010.

"Unintentional reversal" means any reversal, including wildfires or disease, that is not the result of the forest owner's negligence, gross negligence, or willful intent.

"Unspecified source of electricity" or "unspecified source" has the same meaning as in chapter 173-441 WAC.

"Vintage year" means the annual allowance allocation budget year to which an individual Washington GHG allowance is assigned.

"Voluntary renewable reserve account" or "voluntary renewable electricity reserve account" means a holding account maintained by ecology from which allowances may be retired for voluntary renewable electricity generation, which is directly delivered to the state and has not and will not be sold or used to meet any other mandatory requirements in the state or any other jurisdiction, on behalf of voluntary renewable energy purchasers or end users.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-040 Covered emissions. (1) Reported emissions. Covered emissions are GHG emissions reported under chapter 173-441 WAC except as modified in subsections (2) through (4) of this section. Covered emissions:

(a) Are calculated on a calendar year basis using chapter 173-441 WAC;

(b) Include emissions of all GHGs identified in WAC 173-441-040;

(c) Are expressed in units of CO_2e as calculated using chapter 173-441 WAC; and

(d) Must be based on any assigned emissions level under WAC 173-441-086.

(2) Exemptions.

(a) Covered emissions do not include the following emissions reported under chapter 173-441 WAC:

(i) Carbon dioxide emissions from the combustion of biomass, renewable fuels of biogenic origin, or biofuels from any facility, supplier, or first jurisdictional deliverer. Emissions of other GHGs related to the combustion of biomass or biofuels are not exempt.

(ii) GHG emissions from the following facilities:

(A) A coal-fired electric generation facility exempted from additional GHG limitations, requirements, or performance standards under RCW 80.80.110; or

(B) Facilities with North American industry classification system code 92811 (national security).

(C) Municipal solid waste landfills that are subject to, and in compliance with, chapter 70A.540 RCW.

(iii) Sequestered carbon dioxide when it can be demonstrated to ecology's satisfaction that it qualifies as permanent sequestration, as defined in WAC 173-407-110, either through long-term geologic sequestration or by conversion into long-lived mineral form.

(b) The following supplier emissions are not covered emissions if the supplier can demonstrate to ecology's satisfaction as specified under WAC 173-441-122 (5)(d)(xi) that the emissions originate from:

(i) The combustion of the following fuels, if demonstrated to ecology's satisfaction that they are used for aviation purposes:

(A) Kerosene-type jet fuel; and

(B) Aviation gasoline.

(ii) Watercraft fuels supplied in Washington that are not combusted inside Washington or in waters under the jurisdiction of Washington:

(A) The following fuels may be assumed to be watercraft fuels combusted outside of waters under the jurisdiction of Washington:

(I) Residual fuel oil No. 5 (navy special); and

(II) Residual fuel oil No. 6 (a.k.a. bunker C).

(B) For all other fuels, including distillate No. 2 and distillate fuel oil No. 4, to qualify for this exemption, suppliers must demonstrate to ecology's satisfaction both that the fuels are used in watercraft and that they are combusted outside of waters under the jurisdiction of Washington.

(iii) Motor vehicle fuel or special fuel used exclusively for agricultural purposes by a farm fuel user as described in WAC 173-441-122 (5)(d)(xi)(C).

(iv) Fuels used for transporting agricultural products on public highways if it meets the requirements in RCW 82.08.865 as described in WAC 173-441-122 (5)(d)(xi)(C). This exemption is in effect for emissions years 2023 through 2027 and is not available for emissions after 2027.

(v) Products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier can demonstrate to ecology's satisfaction that the product is not combusted or oxidized. All products listed in Table MM-1, except asphalt and road oil, are by default assumed to be combusted or oxidized unless demonstrated otherwise.

(3) Allotment of covered emissions to avoid double counting or including emissions that occur outside the program. The facility, supplier, or first jurisdictional deliverer that reports GHG emissions under chapter 173-441 WAC holds the compliance obligation for the covered emissions it reports unless otherwise provided in this subsection. This subsection provides details on allotment for covered emissions that are potentially attributable to multiple parties and provides direction for allotment when such emissions may be reported by multiple facilities, suppliers, or first jurisdictional deliverers of electricity. This subsection only describes the process for determining which covered or opt-in entity is responsible for a given metric ton of covered emissions after the application of exemptions described in subsection (2) of this section, and does not expand the definition of covered emissions.

(a) Allotment of covered emissions for facilities.

(i) The following GHG emissions are covered emissions for facilities:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas;

(B) Emissions from the on-site combustion of residual fuel oil No. 5 (navy special), and residual fuel oil No. 6 (a.k.a. bunker C);

(C) Emissions from the on-site combustion of a fuel product where the fuel product was generated or modified on-site and not purchased in its combusted form from a supplier. These fuel products may include, but are not limited to: Refinery gas, still gas, fuel gas, landfill gas, and biogas;

(D) Carbon dioxide collected and supplied off-site that the facility owner or operator cannot demonstrate to ecology's satisfaction is part of the covered emissions of another covered or opt-in entity under this chapter.

(E) Emissions from an electric generating facility in Washington serving as a first jurisdictional deliverer derived from any of the means in (a)(i)(A) through (D) of this subsection except as exempted in subsection (2) of this section; and

(F) All other reported emissions under WAC 173-441-120 are covered emissions for the facility unless otherwise specified in subsection (2) of this section or (a)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for facilities:

(A) Emissions from the on-site combustion of any fuel product as described in WAC 173-441-122(5) except those described in (a)(i)(A), (B) or (C) of this subsection;

(B) Carbon dioxide collected and supplied off-site that the facility owner or operator can demonstrate to ecology's satisfaction is part of the covered emissions of another covered or opt-in entity under this chapter.

(b) Allotment of covered emissions for suppliers of natural gas.

(i) The following GHG emissions are covered emissions for suppliers of natural gas:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas supplied to any facility or supplier of natural gas that is not a covered or opt-in entity under this chapter.

(B) All other reported emissions under WAC 173-441-122(4) are covered emissions for the supplier unless otherwise specified in subsection (2) of this section or (b)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of natural gas:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas supplied to any facility, supplier of natural gas, or other party that is a covered or opt-in entity under this chapter.

(B) Emissions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington.

(c) Allotment of covered emissions for suppliers of fossil fuels other than natural gas.

(i) The following GHG emissions are covered emissions for suppliers of fossil fuels other than natural gas:

(A) Emissions from the combustion of any fuel product, except those described in (a)(i)(B) or (C) of this subsection; or

(B) All other reported emissions under WAC 173-441-122(5) are covered emissions for the supplier of fossil fuel other than natural gas unless otherwise specified in subsection (2) of this section or (c)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of fossil fuels other than natural gas:

(A) Emissions from the combustion of fuel products described in (a)(i)(B) or (C) of this subsection;

(B) Emissions from products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier is also a refiner and can demonstrate to ecology's satisfaction that the product is used as a noncrude feedstock at a refinery in Washing-

ton under their operational control. These noncovered emissions must meet the standards described in Subpart MM, and are calculated using provisions described in Sec. 98.393(b) and subtracted as described in Sec. 98.393(d), which is limited to modifications due to noncrude feedstocks. Emissions occurring at the refinery due to processing the noncrude feedstock are part of the facility's covered emissions. Processed or unprocessed products associated with the previously excluded noncrude feedstocks leaving the refinery are no longer excluded and part of the supplier's covered emissions. Emissions covered under this provision are not also eligible for adjustments due to the product previously being delivered by a position holder or refiner out of an upstream WA terminal or refinery rack prior to delivery out of a second terminal rack.

(C) Emissions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington; or

(D) Emissions that are part of the covered emissions of another covered or opt-in entity under this chapter.

(d) Allotment of covered emissions for suppliers of carbon dioxide.

(i) The following GHG emissions are covered emissions for suppliers of carbon dioxide:

(A) Carbon dioxide emissions that the supplier cannot demonstrate to ecology's satisfaction are part of the covered emissions of another covered or opt-in entity under this chapter; or

(B) All other reported emissions under WAC 173-441-122(3) are covered emissions for the supplier of carbon dioxide unless otherwise specified in subsection (2) of this section or (d)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of carbon dioxide: Carbon dioxide emissions when the supplier can demonstrate to ecology's satisfaction that they are part of the covered emissions of another covered or opt-in entity under this chapter are not covered emissions for the supplier of carbon dioxide.

(e) Allotment of covered emissions for first jurisdictional deliverers of imported electricity.

(i) GHG emissions associated with imported electricity are covered emissions for the first jurisdictional deliverer serving as the electricity importer for that electricity. <u>The electricity importer is identified through the definition and procedures in chapter 173-441 WAC.</u>

(ii) If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has not voluntarily elected to comply with the program, then the party deemed to be the electricity importer is the next purchasing-selling entity in the physical path on the NERC e-tag, or if there is no additional purchasing-selling entity over which the state of Washington has jurisdiction, then a utility that purchases electricity for use in the state of Washington from that federal power marketing administration or the generation balancing authority. Such a utility or generation balancing authority is a covered entity under this program and has the compliance obligation for the GHG emissions associated with that electricity.

(iii) If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, ((~~and~~)) the federal power marketing administration ((~~has~~))

may voluntarily ((~~elected~~)) elect to comply with the program((~~, then any utility that purchases electricity for use in the state of Washington from that federal power marketing administration may provide by agreement for the assumption of the compliance obligation by the federal power marketing administration. The department of ecology must be notified of such an agreement at least 12 months prior to the compliance period for which the agreement is applicable or, for the first compliance period, 12 months prior to the first calendar year to which the agreement is applicable~~)) in accordance with the requirements of section 11, chapter 352, Laws of 2024, either for all sales into Washington, or for resources attributed into Washington in a centralized electricity market for which the federal power marketing administration is the deemed market importer. Upon the election taking effect ((~~of the agreement, the covered emissions for the utility are the responsibility of~~)), the federal power marketing administration ((~~as long as the agreement is in effect~~)) will assume the compliance obligation for covered emissions consistent with its election. If no ((~~agreement is in place for a utility that purchases electricity from~~)) such election has been made by that federal power marketing administration, then the requirements of subsection (e)(ii) of this section apply to the GHG emissions associated with that electricity.

(iv) For ((~~the first compliance period the electricity importer for electricity derived from the energy imbalance market is the energy imbalance market purchasing entity located or operating in Washington that receives the delivery of electricity transacted through the energy imbalance market. For electricity transferred through the energy imbalance market that is~~)) electricity generated by ((~~a first jurisdictional deliverer with a compliance obligation under this chapter, there is no~~)) an electric generating facility in Washington where the owner or operator of that facility successfully offers electricity into a centralized electricity market and is assigned, designated, deemed, or attributed to be serving Washington electric load by the methodologies, processes, or decision algorithms put in place by the market operator of that centralized electricity market, the compliance obligation for ((~~that same electricity if it is delivered to an energy imbalance market purchasing entity in Washington~~)) the GHG emissions associated with that electricity is determined once, based on the emissions reported for that electricity under WAC 173-441-120.

(4) Adjustments to covered emissions. Ecology may adjust the covered emissions for any emissions year for a facility, supplier, or first jurisdictional deliverer based on new reported information, a new assigned emissions level under WAC 173-441-086, or to compensate for a change in methodology as described in WAC 173-441-050(4).

WSR 24-14-103
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:37 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-16-113 When may an agency head or higher education institution president consider granting preference to eligible applicants in the hiring process?, 357-16-125 What must be specified in the employer's certification procedure?, and 357-58-197 When may an agency head consider granting preference to eligible WMS applicants in the hiring process?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call-in option) https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVVQT09, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 6157, chapter 330, Laws of 2024, passed during the 2024 legislative session with an effective date of June 6, 2024. This bill intends to reform civil service by incorporating civil service advantage for bilingual and multilingual applicants, applicants with prior work experience in social services, and applicants with higher education. Section 1 adds a new section to chapter 41.04 RCW to state that in all competitive examinations to determine the qualifications of applicants, the agency head within a hiring organization has the discretion to add a maximum of 15 percent to the passing mark, grade, or rating only in accordance with outlined criteria. Preference points may not be aggregated to exceed more than 15 percent of an applicant's examination score, shall be added to the passing mark, grade, or rating of competitive examinations until the candidate's first appointment and may not be used in promotional examinations. The bill also defines "full professional fluency" and "native speaker." The proposed new section WAC 357-16-113 addresses when may an agency head or higher education institution president consider granting preference to eligible applicants in the hiring process. The proposed amendment to WAC 357-16-125 requires an employer's certification procedure to address when the employer will consider granting preference to eligible applicants under the provisions of WAC 357-16-113. The proposed new section WAC 357-58-197 addresses when may an agency head consider granting preference to eligible Washington management service applicants in the hiring process.

Reasons Supporting Proposal: To align the civil service rules (Title 357 WAC) with the requirements of the new law.

Statutory Authority for Adoption: RCW 41.06.150.

Statute Being Implemented: Section 1, chapter 330, Laws of 2024.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

July 1, 2024
Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-5417.2

NEW SECTION

WAC 357-16-113 When may an agency head or higher education institution president consider granting preference to eligible applicants in the hiring process? (1) An agency head or higher education institution president may consider granting preference to eligible applicants in the hiring process if administering an examination prior to certification for any of the following qualifications in accordance with chapter 41.04 RCW:

(a) Ten percent to an applicant who has obtained full professional proficiency or who is completely fluent as a native speaker in two or more languages other than English;

(b) Five percent to an applicant who has obtained full professional proficiency or who is completely fluent as a native speaker in one language other than English;

(c) Five percent to an applicant with two or more years of professional experience or volunteer experience in the Peace Corps, AmeriCorps, domestic violence counseling, mental or behavioral health care, homelessness programs, or other social services professions; and

(d) Five percent to an applicant who has obtained an associate of arts or science degree or higher degree.

(2) The preference granted under this section may not be aggregated to exceed more than 15 percent of the applicant's examination score, shall be added to the passing mark, grade, or rating of competitive examinations until the applicant's first appointment, and may not be used in promotional examinations.

(3) For purposes of this section "full professional fluency" and "native speaker" have the same meaning as in RCW 41.04.XXX (section 1, chapter 330, Laws of 2024).

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-125 What must be specified in the employer's certification procedure? The employer's certification procedure must:

(1) Specify how the employer determines the pool of eligible candidates to be certified to the employing official in accordance with WAC 357-16-130;

(2) Specify how the employer determines the number of names certified if the number of eligible candidates certified to the employing official is limited;

(3) Provide for veterans' preference in accordance with WAC 357-16-110;

(4) Provide for supplemental certification of affected group members in accordance with WAC 357-16-135;

(5) Require that employing officials consider all eligible candidates certified;

(6) Provide for optional consideration of employees who have completed employer-approved training programs and are determined by the employer to meet the competencies and other position requirements;

(7) For general government employers, must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles; ((~~and~~))

(8) Address when the employer will certify qualified individuals seeking reemployment under the provisions of WAC 357-19-470; and

(9) Address when the employer will consider granting preference to eligible applicants under the provisions of WAC 357-16-113.

OTS-5418.2

NEW SECTION

WAC 357-58-197 When may an agency head consider granting preference to eligible WMS applicants in the hiring process? (1) An agency head may consider granting preference to eligible WMS applicants in the hiring process if administering an examination prior to certification for any of the following qualifications in accordance with chapter 41.04 RCW:

(a) Ten percent to an applicant who has obtained full professional proficiency or who is completely fluent as a native speaker in two or more languages other than English;

(b) Five percent to an applicant who has obtained full professional proficiency or who is completely fluent as a native speaker in one language other than English;

(c) Five percent to an applicant with two or more years of professional experience or volunteer experience in the Peace Corps, AmeriCorps, domestic violence counseling, mental or behavioral health care, homelessness programs, or other social services professions; and

(d) Five percent to an applicant who has obtained an associate of arts or science degree or higher degree.

(2) The preference granted under this section may not be aggregated to exceed more than 15 percent of the applicant's examination score, shall be added to the passing mark, grade, or rating of competitive examinations until the applicant's first appointment, and may not be used in promotional examinations.

(3) For purposes of this subsection "full professional fluency" and "native speaker" have the same meaning as in RCW 41.04.XXX (section 1, chapter 330, Laws of 2024).

WSR 24-14-104
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:38 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-165 At what rate do general government employees accrue vacation leave?, 357-31-166 At what rate do higher education employees accrue vacation leave?, 357-46-067 What is an employee's status during temporary layoff?, 357-58-175 May an employer authorize lump sum vacation leave and/or accelerate vacation leave accrual rates to support the recruitment and/or retention of an employee or candidate for a WMS position?, 357-58-180 Must an agency have a policy regarding authorization of additional vacation leave to support the recruitment and/or retention of an employee or a candidate for a WMS position?, 357-58-210 When may a WMS employee transfer to a WGS position and vice versa?, 357-58-470 How does an employer determine an employee's employment retention rating?, and 357-58-554 What is a WMS employee's status during temporary layoff?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call in option) https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVVQT09, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 357-31-165(1) and 357-31-166(1) are to align with the WAC style guide. The proposed amendment to WAC 357-31-165(2) is to replace "or" with "and/or" to align with WAC 357-58-175. The proposed amendment to WAC 357-31-165 (3)(b) is to mirror the language in WAC 357-31-166 (3)(b) to provide clarity that employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050 and 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual. The proposed amendment to WAC 357-31-165 (3)(c) is to clarify exempt employment with an employer (not just limited to a general government employer as previously stated) is credited when computing a general government employee's rate of vacation leave accrual. The proposed amendment to WAC 357-31-166 (3)(a) is to replace language from "full-time faculty and/or administrative exempt" to "exempt academic and professional personnel." The proposed amendments to WAC 357-31-166 (3)(c) and (d) are to mirror the language in WAC 357-31-165(3). The proposed amendments to WAC 357-46-067 and 357-58-554 are to remove obsolete language. The proposed amendments to WAC 357-58-175 are to replace "can" with "may" and "or" with "and/or" in the WAC title for consistency with the body of the WAC and to meet the original intent of the rule. The proposed amendments to WAC 357-58-180 are to align the title of the WAC with the body of the WAC to meet the original intent of the rule. The proposed amendment to WAC 357-58-210 is to correct the ref-

erence from "management band" to "same salary standard and/or same evaluation points," and to match the body of the WAC with the title of the WAC. The proposed amendment to WAC 357-58-470 removes obsolete language.

Reasons Supporting Proposal: The proposed amendments to WAC 357-31-165(1), 357-31-165(3), 357-31-166(1), 357-31-166 (3)(c), 357-31-166 (3)(d), 357-46-067, 357-58-210, and 357-58-554 are housekeeping in nature. The proposed amendment to WAC 357-31-165(2) is to align with the intent of the original rule making to allow employers to have flexibility to authorize a lump-sum accrual of vacation leave and/or accelerate the vacation leave accrual rate. This was an oversight when WAC 357-31-165 was originally adopted. The proposed amendments to WAC 357-31-166 (3)(a) are to provide clarity for consistency to align with higher education institution practice. The proposed amendments to WAC 357-58-175 and 357-58-180 are to provide clarification to allow for consistency with the body of the WAC and meet the original intent of the rule. The amendment to WAC 357-58-470 is to remove obsolete language.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 41.06.133.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

July 1, 2024
Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-5432.1

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-31-165 At what rate do general government employees accrue vacation leave? (1) Full-time general government employees accrue vacation leave at the following rates:

(a) During the first and second years of current continuous state employment - Nine hours, ((~~twenty~~)) 20 minutes per month;

(b) During the third year of current continuous state employment - ((~~Ten~~)) 10 hours per month;

(c) During the fourth year of current continuous state employment - ((~~Ten~~)) 10 hours, ((~~forty~~)) 40 minutes per month;

(d) During the fifth and sixth years of total state employment - ((~~Eleven~~)) 11 hours, ((~~twenty~~)) 20 minutes per month;

(e) During the seventh, eighth, and ninth years of total state employment - ((~~Twelve~~)) 12 hours per month;

(f) During the ((~~tenth, eleventh, twelfth, thirteenth and fourteenth~~)) 10th, 11th, 12th, 13th, and 14th years of total state employment - ((~~Thirteen~~)) 13 hours, ((~~twenty~~)) 20 minutes per month;

(g) During the ((~~fifteenth, sixteenth, seventeenth, eighteenth and nineteenth~~)) 15th, 16th, 17th, 18th, and 19th years of total state employment - ((~~Fourteen~~)) 14 hours, ((~~forty~~)) 40 minutes per month;

(h) During the ((~~twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth~~)) 20th, 21st, 22nd, 23rd, and 24th years of total state employment - ((~~Sixteen~~)) 16 hours per month; and

(i) During the ((~~twenty-fifth~~)) 25th and succeeding years of total state employment - ((~~Sixteen~~)) 16 hours, ((~~forty~~)) 40 minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave and/or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or employee for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(i) of this section.

(3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual.

(c) Exempt employment with ((~~a general government~~)) an employer is credited, other than that specified in WAC 357-04-055 which is excluded.

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

WAC 357-31-166 At what rate do higher education employees accrue vacation leave? (1) Full-time higher education employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - 12 days (eight hours per month);

(b) During the second year of continuous state employment - 13 days (eight hours, 40 minutes per month);

(c) During the third and fourth years of continuous state employment - 14 days (nine hours, 20 minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - 15 days (10 hours per month);

(e) During the eighth, ninth, and ((~~tenth~~)) 10th years of total state employment - 16 days (10 hours, 40 minutes per month);

(f) During the ((~~eleventh~~)) 11th year of total state employment - 17 days (11 hours, 20 minutes per month);

(g) During the ((~~twelfth~~)) 12th year of total state employment - 18 days (12 hours per month);

(h) During the ((~~thirteenth~~)) 13th year of total state employment - 19 days (12 hours, 40 minutes per month);

(i) During the ((~~fourteenth~~)) 14th year of total state employment - 20 days (13 hours, 20 minutes per month);

(j) During the ((~~fifteenth~~)) 15th year of total state employment - 21 days (14 hours per month);

(k) During the ((~~sixteenth~~)) 16th and succeeding years of total state employment - 22 days (14 hours, 40 minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.

(3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Each contract year, or equivalent, of ((~~full-time faculty and/or administrative~~)) exempt academic and professional personnel employment with a higher education employer is credited as one year of qualifying service.

((~~(4)~~)) (b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, and 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual.

(c) Employment in the legislative and/or judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(d) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

OTS-5087.1

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-46-067 What is an employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary, seniority, and unbroken service dates are not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.

(2) An employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. ((~~The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.~~))

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

OTS-5126.3

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-175 ((~~Can~~)) May an employer authorize lump sum vacation leave and/or accelerate vacation leave accrual rates to support the recruitment and/or retention of an employee or candidate for a WMS position? In addition to the vacation leave accruals as provided in WAC 357-31-165, an employer may authorize ((~~additional~~)) lump sum vacation leave and/or accelerate vacation leave accrual rates as follows to support the recruitment and/or retention of an employee or candidate for a specific WMS position:

(1) Employers may authorize an accelerated accrual rate for an employee or candidate. The WMS employee would remain at the accelerated accrual rate until the WMS employee's anniversary date caught up to the accrual rate amount in accordance with WAC 357-31-165; and/or

(2) Employers may authorize a lump sum accrual of up to ((~~eighty~~)) 80 hours of vacation leave for the employee or candidate.

Vacation leave accrued under this section must be used in accordance with the leave provisions of chapter 357-31 WAC.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-180 Must an agency have a policy regarding authorization of additional vacation leave to support the recruitment ((~~of a~~)) and/or retention of an employee or candidate ((~~or the retention of an employee~~)) for a WMS position? In order to authorize additional vacation leave for the recruitment and/or retention of ((~~a candidate or~~)) an employee or a candidate for a WMS position, an agency must have a written policy that:

(1) Identifies the reasons for which the employer may authorize additional vacation leave; and

(2) Requires that lump sum vacation leave accruals only be granted after services have been rendered in accordance with express conditions established by the employer.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-210 When may a WMS employee transfer to a WGS position and vice versa? A permanent employee may transfer from a WMS position to a WGS position if the employee's salary is within the salary range of the WGS position.

A permanent employee may transfer from a WGS position to a WMS position if the employee's salary is within the ((~~management band~~)) same salary standard and/or same evaluation points assigned to the WMS position.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-470 How does an employer determine an employee's employment retention rating? The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055. ((~~Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.~~))

AMENDATORY SECTION(Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. ((~~The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's agency enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.~~))

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

WSR 24-14-105
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:39 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-25-027 What must be included in the agency's sexual harassment policy?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call-in option) https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVVQT09, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 133, Laws of 2022 (ESHB 1795), passed during the 2022 legislative session with an effective date of June 9, 2022. This bill prohibits nondisclosure and nondisparagement provisions from employers regarding illegal acts of discrimination, harassment, retaliation, wage and hour violations, and sexual assault. This bill repeals RCW 49.44.210 and replaces it with RCW 49.44.211. The proposed amendments to WAC 357-25-027 repeal subsection (17) to replace with updated language and amend the "employee" definition reference from RCW 49.44.210 to RCW 49.44.211 to align with the changes in law.

Reasons Supporting Proposal: To align WAC 357-25-027 with the requirements in the new law (chapter 133, Laws of 2022).

Statutory Authority for Adoption: RCW 41.06.150.

Statute Being Implemented: RCW 49.44.211.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

July 1, 2024
Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-4004.3

AMENDATORY SECTION (Amending WSR 20-24-021, filed 11/20/20, effective 12/28/20)

WAC 357-25-027 What must be included in the agency's sexual harassment policy? Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

(1) Indicate who is covered by the policy;

(2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;

(3) A statement that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;

(4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;

(5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;

(6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;

(7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;

(8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;

(9) A statement that the complainant shall be informed of the status and the outcome of an investigation;

(10) Identify the agency's investigation or response procedure;

(11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

(a) Preventing or not engaging in sexual harassment;

(b) Responding to concerns or allegations of violations of the policy;

(c) Participation in an investigation under the policy; and

(d) The prohibition against retaliation.

(12) A statement that confidentiality cannot be guaranteed;

(13) A statement that responses to public records requests will be provided in accordance with RCW 42.56.660 and 42.56.675;

(14) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;

(15) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal;

(16) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal; and

(17) A statement that an employer may not require an employee((~~, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with RCW 49.44.210~~)) to sign an agreement that prevents the employee from disclosing or discussing conduct or the existence of a settlement involving conduct described in RCW 49.44.211 and that it is a violation for the employer to discharge or otherwise discriminate or retaliate against the employee for disclosing or discussing such conduct.

For the purposes of this subsection, "employee" has the same meaning as defined in RCW ((~~49.44.210~~)) 49.44.211.

WSR 24-14-106
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:40 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-01-277 Redeployment, 357-04-124 When may a general government employer request director approval to redeploy an employee during an emergency or disaster?, 357-19-073 What happens if an employee who is serving a probationary period accepts a nonpermanent appointment?, 357-19-080 What happens if a permanent employee accepts a nonpermanent appointment during a trial service period?, 357-19-085 Does time worked in a nonpermanent appointment count towards the probationary or trial service period for a permanent position?, 357-19-165 What is the difference between reassignment and transfer?, 357-19-179 What provisions apply when a general government employee in classified service is redeployed to a different geographic area?, 357-19-353 What return rights must an employer provide to a WGS employee who accepts an acting WMS appointment?, 357-19-360 For what reasons may an employer make nonpermanent appointments?, 357-19-365 When is it inappropriate for an employer to fill a position with a nonpermanent appointment to address a short-term immediate workload peak or other short-term needs?, 357-19-370 How long may a nonpermanent appointment last?, 357-19-388 What notices must employees and their employers provide each other when an employee accepts a nonpermanent appointment?, 357-19-395 What return rights must an employer provide to an employee who accepts a nonpermanent appointment?, 357-19-430 When may the director take remedial action for nonpermanent employees and what does remedial action include?, 357-28-148 How is a general government employee's salary determined when the employee is redeployed for reasons specified in WAC 357-19-360(2)?, 357-58-065 Definitions for WMS, 357-58-128 How is a WMS employee's salary determined when the employee is redeployed for reasons specified in WAC 357-58-265(2)?, 357-58-225 What return rights must an employer provide to a WMS employee who accepts a nonpermanent appointment to a WGS position?, 357-58-226 What happens when a WMS employee who was serving a review period and was appointed to a WGS nonpermanent position returns to a WMS position?, 357-58-265 When may an agency make an acting WMS appointment and what actions are required?, 357-58-270 Does time in an acting appointment count as time in the review period?, and 357-58-275 May a WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call-in option) https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVVQT09, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends the civil service rules (Title 357 WAC) to allow general government employers to redeploy an employee within or between general government employers in the same or different job class with the same or different salary range maximum for a limited duration to support staffing shortages during an emergency or a disaster for the preservation of public health, safety, or general welfare. The proposal to repeal WAC 357-19-165 is to remove redundant language. The proposed amendment to WAC 357-19-353 is to also reflect gender neutral references.

Reasons Supporting Proposal: During the COVID-19 response, some general government employers encountered shortages of employees in segments of their operations, while other agencies had employees with the capacity and skill sets that could have been redeployed to address the staffing shortages. The proposal will help ensure general government employers are able to maintain necessary staffing in the event of future emergencies.

Statutory Authority for Adoption: RCW 41.06.150.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

July 1, 2024
Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-5112.1

NEW SECTION

WAC 357-01-277 Redeployment. A general government employer-initiated movement of an employee within or between general government employers in the same or different job class with the same or different salary range maximum for a limited duration to support staffing shortages during an emergency or disaster in accordance with WAC 357-04-124.

OTS-5113.2

NEW SECTION

WAC 357-04-124 When may a general government employer request director approval to redeploy an employee during an emergency or disaster? During an emergency or a disaster, a general government employer may request director approval to redeploy an employee within or between general government employers for the preservation of public health, safety, or general welfare. The employee must have the necessary skills, abilities, and/or licensure in order to be redeployed. For purposes of this section, emergency or disaster has the same meaning as in RCW 38.52.010.

OTS-5114.5

AMENDATORY SECTION (Amending WSR 09-11-064, filed 5/14/09, effective 6/16/09)

WAC 357-19-073 What happens if an employee who is serving a probationary period accepts a nonpermanent appointment? (1) If an employee who is serving a probationary period accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1), the probationary period will end and the employee will not be granted permanent status unless the employer agrees to return the employee to a position at the conclusion of the nonpermanent appointment. Any return rights granted by the employer must be to a vacant position in the class in which the employee was serving a probationary period. If the employer chooses to grant the employee a return right, the employer must notify the employee in writing.

(2) If a general government employee who is serving a probationary period is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2), the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

(3) Upon return from a nonpermanent appointment the employee will resume their probationary period. If the employer determines the position the employee was serving a probationary period in and the position the employee was appointed to on a nonpermanent basis are allocated to classes which are closely related, the employer may count the time worked in the nonpermanent appointment towards the probationary period.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-19-080 What happens if a permanent employee accepts a nonpermanent appointment during a trial service period? (1) If a

permanent employee accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1) during a trial service period and the employer has agreed to return the employee to a position at the conclusion of the nonpermanent appointment, the employer may:

((~~(1)~~)) (a) Suspend the trial service period and allow the employee to resume the trial service period when the employee returns from the nonpermanent appointment;

((~~(2)~~)) (b) Require the trial service period to start over when the employee returns from the nonpermanent appointment; or

((~~(3)~~)) (c) Count the time worked in the nonpermanent appointment towards the trial service period.

(2) If a permanent general government employee is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2) during a trial service period, the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment and the employer must count time worked in the nonpermanent appointment towards the trial service period for the permanent position. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-085 Does time worked in a nonpermanent appointment count towards the probationary or trial service period for a permanent position? (1) If an employee in a nonpermanent appointment for reasons specified in WAC 357-19-360(1) is subsequently appointed permanently to the same or a similar position, the employer may count time worked in the nonpermanent appointment towards the probationary or trial service period for the permanent position.

(2) If a general government employee in a nonpermanent appointment for reasons specified in WAC 357-19-360(2) is subsequently appointed permanently to the same or similar position, the employer may count time worked in the nonpermanent appointment towards the probationary period and must count time worked in the nonpermanent appointment towards the trial service period for the permanent position.

NEW SECTION

WAC 357-19-179 What provisions apply when a general government employee in classified service is redeployed to a different geographic area? When a general government employee in classified service is redeployed to a position in a different geographic area, the following applies:

(1) If the redeployment is within a reasonable commute of the employee's domicile, they may be redeployed without the employee's agreement.

(2) If the redeployment is outside of a reasonable commute of the employee's domicile, they may only be redeployed with the employee's consent.

For purposes of this section, the general government employer initiating the redeployment defines what is within a reasonable commute.

AMENDATORY SECTION (Amending WSR 05-12-094, filed 5/27/05, effective 7/1/05)

WAC 357-19-353 What return rights must an employer provide to a ((~~permanent~~)) WGS employee who accepts an acting WMS appointment? (1) At a minimum, the employer must provide the permanent employee who is leaving a WGS position with the employer to accept a WMS acting appointment for reasons specified in WAC 357-58-265 (1)(a) access to the employer's internal layoff list at the conclusion of the acting appointment. If the employer agrees to return the employee to a position, the employee must notify the employer of ((~~his/her~~)) their intent to return to a permanent position at least ((~~fourteen (14)~~)) 14 calendar days in advance of return unless the employee and employer agree otherwise. Failure of the employee to provide proper written notice to the employer may result in forfeiture of any return rights. Upon return to a permanent position, the employee's salary must be determined by the employer's salary determination policy.

(2) A general government employer must return an employee who was redeployed for reasons specified in WAC 357-58-265 (1)(b) to the same WGS position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary is set at the step the employee would be at if they had not left the position.

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-360 For what reasons may an employer make nonpermanent appointments? (1) An employer may fill a position with a nonpermanent appointment when any of the following conditions exist:

((~~(1)~~)) (a) A permanent employee is absent from the position;

((~~(2)~~)) (b) The employer is recruiting to fill a vacant position with a permanent appointment;

((~~(3)~~)) (c) The employer needs to address a short-term immediate workload peak or other short-term needs;

((~~(4)~~)) (d) The employer is not filling a position with a permanent appointment due to the impending or actual layoff of a permanent employee(s); or

((~~(5)~~)) (e) The nature of the work is sporadic and does not fit a particular pattern.

(2) A general government employer may fill a position with a nonpermanent appointment when the director has given approval to redeploy an employee in accordance with WAC 357-04-124.

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-365 When is it inappropriate for an employer to fill a position with a nonpermanent appointment to address a short-term immediate workload peak or other short-term needs? Employers **must not** fill a position with a nonpermanent appointment under the provisions of WAC 357-19-360((~~(3)~~)) (1)(c) when the work of the position is scheduled, ongoing and permanent in nature. If at any time during a

nonpermanent appointment, a short-term workload peak or other short-term need becomes ongoing and permanent in nature, the employer must take action to fill the position on a permanent basis.

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-370 How long may a nonpermanent appointment last? (1) Employers are encouraged to limit the duration of ((~~a~~)) nonpermanent appointments for reasons specified in WAC 357-19-360(1) to ((~~twelve~~)) 12 months from the appointment date.

(2) A nonpermanent appointment for a reason specified in WAC 357-19-360 (1) ((~~through (4)~~)) (a) through (d) **must not** exceed ((~~twenty-four~~)) 24 months unless the director has approved an extension of the appointment due to the continued absence of a permanent employee. An employer may choose to not count time spent in formal training programs towards the ((~~twenty-four~~)) 24-month limit. On-the-job training is not considered a formal training program for purposes of this rule.

(3) A nonpermanent appointment specified in WAC 357-19-360(2) **must not** exceed three months unless a longer duration is mutually agreed upon between the employee and general government employer(s) and conditions continue to exist in accordance with WAC 357-04-124. Appointments must not exceed 24 months unless the director has approved an extension of the appointment.

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-388 What notices must employees and their employers provide each other when an employee accepts a nonpermanent appointment? Employees who accept a nonpermanent appointment for reasons specified in WAC 357-19-360(1) must give their current employers at least ((~~fourteen~~)) 14 calendar days' notice before moving to a nonpermanent appointment. The current employer and employee may agree to waive or shorten the notice period.

When the current employer receives the employee's notice, the employee's permanent employer must notify the employee in writing of the employee's return right at the conclusion of the nonpermanent appointment.

For purposes of this rule, written notice may be provided using alternative methods such as email, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 05-12-095, filed 5/27/05, effective 7/1/05)

WAC 357-19-395 What return rights must an employer provide to ((~~a permanent~~)) an employee who accepts a nonpermanent appointment? (1) For nonpermanent appointments made for reasons specified in WAC 357-19-360(1) at a minimum, the employer must provide the permanent employee who is leaving ((~~his/her~~)) their position with the employer

to accept a nonpermanent appointment access to the employer's internal layoff list at the conclusion of the nonpermanent appointment. If the employer agrees to return the employee to a position, the employee must notify the employer of ((~~his/her~~)) their intent to return to a permanent position at least ((~~fourteen~~)) 14 calendar days in advance of return unless the employee and employer agree otherwise. Failure of the employee to provide proper written notice to the employer may result in forfeiture of any return rights. Upon return to a permanent position, the employee's salary must be determined by the employer's salary determination policy.

(2) For nonpermanent appointments made for reasons specified in WAC 357-19-360(2), the general government employee must be returned to the same position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-430 When may the director take remedial action for nonpermanent employees and what does remedial action include? The director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employer has made an appointment that does not comply with rules on nonpermanent appointment; or

(2) The duration of a nonpermanent appointment as defined in WAC 357-19-360 (1)(a) through ((~~(4)~~)) (d) and 357-19-360(2) has exceeded ((~~twenty-four~~)) 24 months without director approval.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-165	What is the difference between reassignment and transfer?

OTS-5115.1

NEW SECTION

WAC 357-28-148 How is a general government employee's salary determined when the employee is redeployed for reasons specified in WAC 357-19-360(2)? The base salary of a general government employee appointed to a position for reasons specified in WAC 357-19-360(2) must be determined as follows:

(1) An employee who is redeployed to a position with the same salary range keeps the same base salary.

(2) An employee who is redeployed to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the employee's previous base salary exceeds the new salary range, the employee's base salary may be set higher than step M but not exceeding their prior base salary.

(3) An employee who is redeployed to a position with a higher salary range must have their salary set in accordance with WAC 357-28-110.

OTS-5116.4

AMENDATORY SECTION (Amending WSR 22-12-074, filed 5/27/22, effective 7/1/22)

WAC 357-58-065 Definitions for WMS. The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

(4) **Director.** State human resources director within the office of financial management.

(5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

(6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

(7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

(8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer-initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Redeployment.** An employer-initiated movement of a WMS employee within or between general government employers to a position in the same or different salary standard and/or evaluation points for a limited duration to support staffing shortages during an emergency or disaster in accordance with WAC 357-04-124.

(13) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

((~~(13)~~)) (14) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

((~~(14)~~)) (15) **Separation.** Separation from state employment for nondisciplinary reasons.

((~~(15)~~)) (16) **Suspension.** An absence without pay for disciplinary reasons.

((~~(16)~~)) (17) **Transfer.** An employee-initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

((~~(17)~~)) (18) **Veterans placement program.** A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

((~~(18)~~)) (19) **Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

((~~(19)~~)) (20) **Washington management service (WMS).** The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

NEW SECTION

WAC 357-58-128 How is a WMS employee's salary determined when the employee is redeployed for reasons specified in WAC 357-58-265(2)? The base salary of a WMS employee appointed to a position for reasons specified in WAC 357-58-265(2) must be determined as follows:

(1) A WMS employee who is redeployed to a position with the same salary standard keeps the same base salary.

(2) A WMS employee who is redeployed to a position with a lower salary standard maximum must be placed within the new salary standard at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new salary standard, the employee's base salary may be set higher than associated salary standard but not exceeding their prior base salary.

(3) A WMS employee who is redeployed to a position with a higher salary standard must receive a salary increase nearest to five percent or up to the minimum of the new salary standard, whichever is greatest, not to exceed the new management band maximum.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-225 What return rights must an employer provide to a ((~~permanent~~)) WMS employee who accepts a nonpermanent appointment to a WGS position? (1) For nonpermanent appointments made for reasons specified in WAC 357-19-360(1) the following applies:

(a) When a permanent WMS employee has accepted a nonpermanent appointment to a WGS position within the **same** agency and the nonpermanent appointment ends, the agency must at a minimum provide the employee the layoff rights of the employee's permanent WMS position. If returning to a permanent WMS position the employee's salary must not be less than the salary of the previously held permanent WMS position.

((~~(2)~~)) (b) When a permanent WMS employee has accepted a nonpermanent appointment to a WGS position within a **different** agency, the original agency must provide layoff rights as specified in ((~~subsection (1)~~)) (a) of this ((~~section~~)) subsection for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

((~~(3)~~)) (c) In lieu of the rights provided in ((~~subsection (1) or (2)~~)) (a) or (b) of this ((~~section~~)) subsection, the agency and the employee may agree to other terms.

(2) For nonpermanent appointments made for reasons listed in WAC 357-19-360(2), the employee must be returned to the same position held prior to the redeployment at the conclusion of the nonpermanent appointment. Upon return to their previous position, the employee's base salary is set as if the employee had not left the position.

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

WAC 357-58-226 What happens when a WMS employee who was serving a review period and was appointed to a WGS nonpermanent position returns to ((~~the same or different~~)) a WMS position? (1) If a WMS employee was serving a review period ((~~and accepted~~)) accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1) to a WGS position and ((~~returned~~)) returns to the same or different WMS position, the employer may allow the prior time served in the WMS review period to count towards the completion of the review period.

(2) If a WMS employee who was serving a review period is redeployed into a WGS nonpermanent appointment in accordance with WAC 357-19-360(2), the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment. The employer must count time worked in the nonpermanent appointment towards the completion of the review period for the permanent position.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-265 When may an agency make an acting WMS appointment and what actions are required? ((~~When necessary to meet organizational needs,~~)) (1) An agency may make nonpermanent appointments in WMS((~~. These appointments~~)) which are called acting appointments. Acting WMS appointments can be made when any of the following conditions exist:

(a) When necessary to meet organization needs; or

(b) When approval has been granted by the director to redeploy an employee in accordance with WAC 357-04-124.

(2) Prior to the acting appointment, the appointing authority must communicate in writing to the employee the anticipated length, intent, salary, and other conditions of the appointment.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-270 Does time in an acting appointment count as time in the review period? (1) When an individual who is in an acting WMS appointment for reasons specified in WAC 357-58-265 (1)(a) is subsequently appointed to a permanent WMS position, time spent in the acting appointment may count towards the review period for the permanent WMS position at the discretion of the appointing authority.

(2) When an individual who is in an acting WMS appointment for reasons specified in WAC 357-58-265 (1)(b) is subsequently appointed to the same or similar permanent WMS position, time spent in the acting appointment must count towards the review period for the permanent WMS position.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-275 May a ((~~permanent~~)) WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment? (1) Permanent WMS employees may accept acting appointments to WMS positions for reasons specified in WAC 357-58-265 (1)(a).

((~~(1)~~)) (a) When a permanent WMS employee has accepted an acting appointment within the **same** agency and the acting appointment ends the following applies:

((~~(a)~~)) (i) The agency may agree to return the employee to a permanent WMS position. If returning to a permanent WMS position, the employee's salary must not be less than the salary of the previously held permanent WMS position.

((~~(b)~~)) (ii) The agency at a minimum must provide the employee the layoff rights of the employee's permanent WMS position in accordance with WAC 357-58-465.

((~~(2)~~)) (b) When a permanent WMS employee has accepted an acting appointment within a **different** agency, the original agency must provide layoff rights as specified in ((~~subsection (1)~~)) (a) of this ((~~section~~)) subsection for six months from the time the employee is appointed. Any return right after six months is negotiable between the

employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

((~~(3)~~)) (c) In lieu of the rights provided in ((~~subsections (1) and (2)~~)) (a) and (b) of this ((~~section~~)) subsection, the agency and the employee may agree to other terms.

(2) When a WMS employee has been redeployed into an acting WMS position for reasons specified in WAC 357-58-265 (1)(b), the employee must be returned to the same position held prior to the redeployment at the conclusion of the acting appointment. Upon return to their previous position, the employee's base salary is set as if the employee had not left the position.

WSR 24-14-107
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:40 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-01-022 Anniversary date (higher education), 357-01-023 Anniversary date (general government), 357-31-210 What is the maximum number of hours of vacation leave that an employee may accumulate?, and 357-31-215 When may vacation leave be accumulated above the maximum 280 hours?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call-in option) https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVVQT09, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2246 (chapter 151, Laws of 2024) passed during the 2024 legislative session, with an effective date of June 6, 2024. Section 1 of this bill amends RCW 43.01.040 to increase the annual cap on the accrual of unused vacation leave for state employees from 240 hours to 280 hours. Section 2 of this bill amends RCW 43.01.044 to increase the amount of unused vacation leave that can be deferred above the maximum from 240 hours to 280 hours. The proposed amendments to WAC 357-01-022 and 357-01-023 increase the amount of unused vacation hours higher education and general government employees may accumulate before it is lost on their anniversary date. The proposed amendments to WAC 357-31-210 update the maximum number of vacation leave hours an employee may accumulate from 240 hours to 280 hours without an exception. The proposed amendments to WAC 357-31-215 address when an employee may accumulate vacation leave above the maximum amount of 280 hours, housekeeping amendments, and to reflect gender-neutral pronouns.

Reasons Supporting Proposal: To align chapters 357-01 and 357-31 WAC with the requirements in the new law (chapter 151, Laws of 2024). The proposed amendment to WAC 357-01-022 is housekeeping in nature.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 43.01.040 and 43.01.044.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not sub-

ject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

July 1, 2024
Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-5367.2

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-022 Anniversary date (higher education). For employees of higher education institutions or related higher education boards, anniversary date is the most recent date of hire into state service. The anniversary date is used to determine when vacation leave over ((~~two hundred forty (240)~~)) 280 hours is lost. Higher education employers may make the anniversary date the first calendar day of the month in which the date of hire occurred. A higher education employee receives a new anniversary date when that employee is rehired following a break in state service, but not when the employee ((~~promotes, demotes, or transfers~~)) is promoted, demoted, or transferred to another higher education employer.

AMENDATORY SECTION (Amending WSR 22-06-006, filed 2/17/22, effective 7/1/22)

WAC 357-01-023 Anniversary date (general government). For employees of general government agencies, anniversary date is the unbroken service date plus prior state service. The anniversary date is used to determine when vacation leave over ((~~two hundred forty~~)) 280 hours is lost and for computing the rate of vacation leave accrual beginning with the fifth year of total state employment.

OTS-5368.2

AMENDATORY SECTION (Amending WSR 17-18-028, filed 8/28/17, effective 10/2/17)

WAC 357-31-210 What is the maximum number of hours of vacation leave that an employee ((~~can~~)) may accumulate? Vacation leave may be accumulated to a maximum of ((~~two hundred forty~~)) 280 hours. Exceptions to this maximum are described in WAC 357-31-215.

AMENDATORY SECTION (Amending WSR 17-18-028, filed 8/28/17, effective 10/2/17)

WAC 357-31-215 When may vacation leave be accumulated above the maximum ((~~two hundred forty~~)) 280 hours? There are two circumstances in which vacation leave may be accumulated above the maximum of ((~~two hundred forty~~)) 280 hours.

(1) If an employee's request for vacation leave is denied by the employer, and the employee is close to the maximum vacation leave (((~~two hundred forty~~)) 280 hours), the employer must grant an extension for each month that the employer defers the employee's request for vacation leave. The employer must maintain a statement of necessity justifying the extension.

(2) As an alternative to subsection (1) of this section, employees may also accumulate vacation leave in excess of ((~~two hundred forty~~)) 280 hours as follows:

(a) An employee may accumulate the vacation leave hours between the time the ((~~two hundred forty~~)) 280 hours is accrued and ((~~his/her~~)) their next anniversary date of state employment.

(b) Leave accumulated above ((~~two hundred forty~~)) 280 hours must be used by the next anniversary date and in accordance with the employer's leave policy. If such leave is not used before the employee's anniversary date, the excess leave is automatically lost and considered to have never existed.

(c) A statement of necessity, as described in subsection (1) of this section, can only defer leave that the employee has not accrued as of the date of the statement of necessity. Any accrued leave in excess of ((~~two hundred forty~~)) 280 hours as of the date of the statement of necessity cannot be deferred regardless of circumstances. For example:

On June 15th, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time.

- On June 15th, the employee's vacation leave balance is ((~~two hundred sixty~~)) 300 hours.
- The employee accrues ((~~ten~~)) 10 hours monthly.
- The employee's anniversary date is October 16th.

Because the employee will not be able to use leave from June 15th through December 15th the employee files a statement of necessity asking to defer the leave accrued during this time. This deferred leave will not be lost as long as the employee uses the deferred hours by their next anniversary date (October 16th of the following year).

The ((~~twenty~~)) 20 hours of excess vacation leave the employee had on June 15th are not covered by the statement of necessity.

WSR 24-14-108
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:41 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-01-170 Examination results, 357-01-267 Qualifying discharge, 357-16-110 Do veterans receive any preference in the hiring process?, 357-46-060 Does a veteran receive any preference in layoff?, and 357-58-475 Does a veteran receive any preference in layoff?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call-in option) https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVVQT09, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2SHB 2014 (chapter 146, Laws of 2024) passed during the 2024 legislative session, effective June 6, 2024, for sections 1-24. This bill intends to align the federal and state definitions of "veteran" expanding state veterans benefits to any veteran who is already eligible for federal Department of Veterans Affairs monetary benefits. Section 4 of the bill adds a new section to chapter 73.04 RCW to define "qualifying discharge." "Honorable discharge" is replaced with "qualifying discharge" throughout the bill. The proposed amendments to WAC 357-01-170 repeal language stating veterans scoring criteria is only added to passing scores since there is more than one way for an eligible candidate to receive preference credits. The proposed new WAC 357-01-267 provides a definition of "qualifying discharge." The proposed amendments to WAC 357-16-110 clarify veterans scoring criteria is only added to passing scores, replace "honorable discharge" with "qualifying discharge" and add clarification that veterans must have a qualifying discharge. The proposed amendments to WAC 357-46-060 and 357-58-475 update the definition of eligible veteran by replacing "honorable discharge" with "qualifying discharge" and remove existing criteria tied to an "honorable discharge."

Reasons Supporting Proposal: To align Title 357 WAC with the requirements in the new law (chapter 146, Laws of 2024).

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: Section 4, chapter 146, Laws of 2024.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

July 1, 2024
Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-5407.2

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-170 Examination results. An eligible candidate's final score on an examination, plus any veteran's scoring criteria or other applicable credits. ((~~Veterans scoring criteria is only added to passing scores.~~))

NEW SECTION

WAC 357-01-267 Qualifying discharge. "Qualifying discharge" has the same meaning as in RCW 73.04.XXX (section 4, chapter 146, Laws of 2024).

OTS-5408.2

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-16-110 Do veterans receive any preference in the hiring process? (1) If an employer is administering an examination prior to certification, the employer must grant preference to veterans in accordance with the veterans scoring criteria provisions of RCW 41.04.010. Veterans' scoring criteria is only added to passing scores.

(2) If no examination is administered prior to certification, the employer must refer the following individuals to the employing official under the provisions of RCW 73.16.010 as long as the individual meets the competencies and other position requirements:

(a) Eligible veterans with a qualifying discharge;

(b) Surviving spouses or registered domestic partners of eligible veterans with a qualifying discharge; or

(c) Spouses or registered domestic partners of ((~~honorably discharged~~)) veterans with a qualifying discharge who have a service-connected permanent and total disability.

OTS-5409.1

AMENDATORY SECTION (Amending WSR 16-17-091, filed 8/18/16, effective 9/20/16)

WAC 357-46-060 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference in layoff by having their seniority increased for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) ((~~Has received,~~)) Upon termination of such service((~~:~~
~~(i) An honorable discharge;~~
~~(ii) A discharge for physical reasons with an honorable record;~~ ~~or~~
~~(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given~~)) has received a qualifying discharge.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired, as evidenced by the "DD Form 214" or other official military records, with ((~~twenty~~)) 20 or more years' active military service and has military retirement pay in excess of ((~~five hundred dollars~~)) $500 per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsections (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

OTS-5410.1

AMENDATORY SECTION (Amending WSR 16-17-091, filed 8/18/16, effective 9/20/16)

WAC 357-58-475 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference in layoff by having their seniority increased for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) ((~~Has received,~~)) Upon termination of such service((~~:~~

~~(i) An honorable discharge;~~

~~(ii) A discharge for physical reasons with an honorable record; or~~

~~(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given~~)) has received a qualifying discharge.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with ((~~twenty~~)) 20 or more years' active military service and has military retirement pay in excess of ((~~five hundred dollars~~)) $500 per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsections (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

WSR 24-14-112
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed July 2, 2024, 8:49 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 24-04-090.

Title of Rule and Other Identifying Information: Chapter 296-880 WAC, Unified safety standards for fall protection. Rule sections regarding warning lines and leading edge.

Hearing Location(s): On August 8, 2024, at 2:30 p.m., virtual and telephonic hearing. Join electronically https://lni-wa-gov.zoom.us/j/86447065346?pwd=ljNanrEqaP2wCUF9i3WKbrzaJwsN2G.1; or join by phone (audio only) 253-215-8782, Meeting ID 864 4706 5346, Passcode 331813031. A prehearing overview will begin at 2:00 p.m. The hearing will start at 2:30 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: September 3, 2024.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Carmyn.Shute@Lni.wa.gov, fax 360-902-5619, beginning July 3, 2024, 8:00 a.m., by August 16, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Carmyn Shute, administrative regulations analyst, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov, by 5:00 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language was originally filed as a CR-105, WSR 24-04-090. L&I received a timely objection to that expedited rule-making filing requiring L&I to file a CR-102 and engage in the standard rule-making process under the Administrative Procedure Act. In May 2023, the division of occupational safety and health (DOSH) received notification from the Federal Occupational Safety and Health Administration (OSHA) relating to DOSH's fall protection standard. The notification advised L&I of needed amendments to the fall protection rule in chapter 296-880 WAC in order to be at-least-as-effective-as those administered by OSHA. This rule making will consider changes to sections of the current fall protection rule that address leading edge work, safety monitor system requirements and roofing activity on low pitched roofs to make them at-least-as-effective-as OSHA, as required by the Washington state plan.

AMENDED SECTIONS:

WAC 296-880-095 Definitions.

- Under fall restraint system, removed "/prevent," added "or" to clarify personal fall restraint systems, and removed "warning line systems, or a warning line system and safety monitor."
- Under safety monitoring system, removed "restraint," "including the leading edge," and "or other walking working surface."

WAC 296-880-30005 Construction work.

- Added exemption stating "A safety monitoring system may be used when engaged in roofing work on a low pitched roof" for further clarification as to when this system is appropriate.

WAC 296-880-40040 Warning line system requirements.

- Removed "are not used, the employer must implement a safety monitor system as described in WAC 296-880-40045" and "who are working between the forward edge of the warning line and the leading edge" as this is no longer allowable under WAC 296-880-40045.

WAC 296-880-40045 Safety monitor system requirements.

- Removed "or leading edge work on low pitched surfaces."

Reasons Supporting Proposal: The proposed rule making is needed in order to be at-least-as-effective-as OSHA under the Washington state plan and to provide additional worker protections.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, [no citation supplied by agency].

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the rule making is proposing to adopt language without material change from federal regulations.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Scope of exemption for rule proposal:

Is fully exempt.

July 2, 2024
Joel Sacks
Director

OTS-4979.1

AMENDATORY SECTION (Amending WSR 22-19-082, filed 9/20/22, effective 11/1/22)

WAC 296-880-095 Definitions. For the purposes of this chapter the following definitions apply:

(1) **Aerial device.** A vehicle-mounted device, telescoping or articulating, or both, which is used to position personnel.

(2) **Affected area.** The distance away from the edge of an excavation equal to the depth of the excavation up to a maximum distance of 15 feet. For example, an excavation 10 feet deep has an affected area extending 10 feet from the edge of any side of the excavation.

(3) **Anchorage.** A secure point of attachment for lifelines, lanyards, or deceleration devices which is capable of withstanding the forces specified in this chapter.

(4) **Boom-supported elevating work platform.** A self-propelled, integral chassis, elevating work platform with a boom-supported platform that can be positioned completely beyond the base.

(5) **Catch platform.** A type of fall arrest system that consists of a platform installed within four vertical feet of the fall hazard, is at least 45 inches wide and is equipped with a standard guardrail system on all exposed sides.

(6) **Catenary line.** See "horizontal lifeline."

(7) **Competent person.** An individual knowledgeable of fall protection equipment, including the manufacturer's recommendations and instructions for the proper use, inspection, and maintenance; and who is capable of identifying existing and potential fall hazards; and who has the authority to take prompt corrective action to eliminate those hazards; and who is knowledgeable of the requirements contained in this chapter regarding the installation, use, inspection, and maintenance of fall protection equipment and systems.

(8) **Connector.** A device which is used to connect parts of the personal fall arrest system and positioning device systems together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or D-ring sewn into a harness, or a snap hook spliced or sewn to a lanyard or self-retracting lanyard).

(9) **Construction work.** All or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

(10) **Deceleration device.** Any mechanism, such as a rope grab, ripstitch lanyard, specifically woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards, etc., which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

(11) **Deceleration distance.** The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's full body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

(12) **Dropline.** A vertical lifeline secured to an upper anchorage for the purpose of attaching a lanyard or device.

(13) **Elevating work platform.** A device used to position personnel, along with their necessary tools and materials, at work locations. It includes a platform and an elevating assembly. It may be vehicle-mounted or have an integral chassis for mobility and as a means of support.

(14) **Equivalent.** Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate and will provide an equal or greater degree of safety for employees than the methods, materials, or designs specified in this standard.

(15) **Fall arrest system.** A fall protection system that will arrest a fall from elevation. Fall arrest systems include personal fall arrest systems that are worn by the user, catch platforms, and safety nets.

(16) **Fall distance.** The actual distance from the worker's support to the level where a fall would stop.

(17) **Fall protection work plan.** A written planning document in which the employer identifies all areas on the job site where a fall hazard of 10 feet or more exists. The plan describes the method or methods of fall protection to be used to protect employees, and includes the procedures governing the installation, use, inspection, and removal of the fall protection method or methods which are selected by the employer. See WAC 296-880-10020.

(18) **Fall restraint system.** A system in which all necessary components function together to restrain((~~/prevent~~)) an employee from falling to a lower level. Types of fall restraint systems include standard guardrail systems((~~,~~)) or personal fall restraint systems((~~, warning line systems, or a warning line system and safety monitor~~)).

(19) **Feasible.** It is possible to perform the work using a conventional fall protection system (i.e., guardrail system, safety net system, or personal fall arrest system) or that it is technologically possible to use any one of these systems to provide fall protection.

(20) **Free fall.** The act of falling before a personal fall arrest system begins to apply force to arrest the fall.

(21) **Free fall distance.** The vertical displacement of the fall arrest attachment point on the employee's full body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

(22) **Full body harness.** A configuration of connected straps that meets the requirements specified in ANSI Z359.1, that may be adjustable to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

(23) **Full body harness system.** A full body harness and lanyard which is either attached to an anchorage meeting the requirements of this chapter; or it is attached to a horizontal or vertical lifeline which is properly secured to an anchorage(s) capable of withstanding the forces specified in this chapter.

(24) **Handrail.** A rail used to provide employees with a handhold for support.

(25) **Hardware.** Snap hooks, D-rings, bucklers, carabiners, adjusters, or O-rings, that are used to attach the components of a fall protection system together.

(26) **Hazardous slope.** A slope from which construction work is performed where normal footing cannot be maintained without the use of

devices due to the pitch of the surface, weather conditions, or surface material.

(27) **Hole.** A gap or void two inches or more in its least dimension, in a floor, roof, or other surface.

(28) **Horizontal lifeline.** A rail, rope, wire, or synthetic cable that is installed in a horizontal plane between two anchorages and used for attachment of a worker's lanyard or lifeline device while moving horizontally; used to control dangerous pendulum like swing falls.

(29) **Infrequent.** The task or job is performed only on occasion, when needed (e.g., equipment breakdown), on an occasional basis, or at sporadic or irregular intervals.

(30) **Lanyard.** A flexible line of webbing, rope, or cable used to secure a positioning harness or full body harness to a lifeline or an anchorage point usually two, four, or six feet long.

(31) **Leading edge.** The advancing edge of a floor, roof, or formwork which changes location as additional floor, roof, or formwork sections are placed, formed, or constructed. A leading edge is considered to be an "unprotected side or edge" during periods when it is not actively and continuously under construction.

(32) **Lifeline.** A vertical line from a fixed anchorage or between two horizontal anchorages, independent of walking or working surfaces, to which a lanyard or device is secured. Lifeline as referred to in this text is one which is part of a fall protection system used as back-up safety for an elevated worker or as a restraint for workers on a flat or sloped surface.

(33) **Locking snap hook.** A connecting snap hook that requires two separate forces to open the gate; one to deactivate the gatekeeper and a second to depress and open the gate which automatically closes when released; used to minimize roll out or accidental disengagement.

(34) **Low pitched roof.** A roof having a slope equal to or less than four in 12.

(35) **Maintenance.** The work of keeping a building, machine, roadway, etc., in a state of good repair.

(36) **Manually propelled elevating work platform.** A manually propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

(37) **Mechanical equipment.** All motor or human propelled wheeled equipment except for wheelbarrows, mopcarts, robotic thermoplastic welders, and robotic crimpers.

(38) **Opening.** A gap or void 30 inches (76 cm) or more high and 18 inches (48 cm) or more wide, in a wall or partition, through which employees can fall to a lower level.

(39) **Personal fall arrest system.** A fall arrest system that is worn by the employee to arrest the employee in a fall from elevation. It consists of an anchor point, connectors, a full body harness, and may include a lanyard, deceleration device, lifeline, or suitable combinations of these.

(40) **Personal fall restraint system.** A fall restraint system that is worn by the employee to keep the employee from reaching a fall point, such as the edge of a roof or elevated work surface. It consists of an anchor point, hardware assemblies, a full body harness and may include a lanyard, restraint lines, or suitable combinations of these.

(41) **Platform.** A work surface elevated above the surrounding floor or ground.

(42) **Positioning device system.** A full body harness or positioning harness that is worn by an employee, and is rigged to allow an employee to be supported on an elevated vertical or inclined surface, such as a wall, pole or column and work with both hands free from the body support.

(43) **Positioning harness.** A body support that meets the requirements specified in ANSI Z359.1 that encircles and closes around the waist and legs with attachment elements appropriate for positioning work.

(44) **Qualified person.** One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

(45) **Repair.** To restore a building, machine, roadway, etc., to an original state after damage or decay.

(46) **Restraint line.** A line from a fixed anchorage or between two anchorages to which an employee is secured in such a way as to prevent the worker from falling to a lower level.

(47) **Roof.** The exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

(48) **Roofing work.** The hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

(49) **Rope grab.** A fall arrester that is designed to move up or down a lifeline suspended from a fixed overhead or horizontal anchorage point, or lifeline, to which the full body harness is attached. In the event of a fall, the rope grab locks onto the lifeline rope through compression to arrest the fall. The use of a rope grab device is restricted for all restraint applications. See WAC 296-880-40025.

(50) **Runway.** A passageway for persons, elevated above the surrounding floor or ground level, such as a footwalk along shafting or a walkway between buildings.

(51) **Safety line.** See "lifeline."

(52) **Safety monitoring system.** A type of fall ((~~restraint~~)) protection system ((~~in~~)) allowed for use when roofing on a low pitched roof which consists of a warning line and a competent person whose only job responsibility is to recognize and warn employees of their proximity to fall hazards when working between the warning line and the unprotected sides and edges((~~, including the leading edge~~)) of a low pitch roof ((~~or other walking/working surface~~)).

(53) **Safety net system.** A type of fall arrest system, as described in WAC 296-880-40055.

(54) **Safety watch system.** A type of fall protection system in which a competent person is responsible for recognizing and warning one employee of a fall hazard.

(55) **Scaffold.** A temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.

(56) **Self-propelled elevating work platform.** A self-propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

(57) **Self-rescue device.** A piece of equipment designed to allow a person, who is suspended in a personal fall arrest system, to inde-

pendently rescue themselves after the fall by moving the device up or down until they reach a surface and are no longer suspended.

(58) **Self-retracting lifeline.** A deceleration device which contains a wound line which may be slowly extracted from, or retracted onto, the device under slight tension during normal employee movement, and which after onset of a fall, automatically locks the drum and arrests the fall.

(59) **Service.** To repair or provide maintenance for.

(60) **Shock absorbing lanyard.** A flexible line of webbing, cable, or rope used to secure a full body harness to a lifeline or anchorage point that has an integral shock absorber.

(61) **Snap hook.** See "locking snap hook."

(62) **Standard guardrail system.** A type of fall restraint system that is a vertical barrier consisting of a top rail and midrail, and toeboard when used as falling object protection for persons who may work or pass below, that is erected along all open sides or edges of a walking/working surface, ramps, platforms, or runways.

(63) **Standard strength and construction.** Any construction of guardrails, handrails, covers, or other guards that meets the requirements of this chapter.

(64) **Static line.** See "horizontal lifeline."

(65) **Steep pitched roof.** A roof having a slope greater than four in 12.

(66) **Structural member.** A support that is a constituent part of any building or structure. Structural members include columns, girders, beams, trusses, joists, and similar supporting members of a building or structure.

(67) **Suitable.** That which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

(68) **Temporary.** The duration of the task the worker performs is brief or short.

(69) **Toeboard.** A vertical barrier at floor level erected along all open sides or edges of a floor opening, platform, runway, ramp, or other walking/working surface to prevent materials, tools, or debris from falling onto persons passing through or working in the area below.

(70) **Unprotected sides and edges.** Any open side or edge of a floor, roof, balcony/deck, platform, ramp, runway, or walking/working surface where there is no standard guardrail system, or parapet wall of solid strength and construction that is at least 39 inches in vertical height.

(71) **Walking/working surface.** Any surface, whether horizontal or vertical on which an employee walks, works, or gains access to a work area or workplace location. Walking/working surfaces include, but are not limited to, floors, the ground, roofs, ramps, bridges, runways, stairs, dockboards, formwork, and reinforcing steel but not including ladders.

(72) **Warning line system.** A barrier erected on a walking and working surface or a low pitch roof (four in 12 or less), to warn employees that they are approaching an unprotected fall hazard(s).

AMENDATORY SECTION (Amending WSR 22-19-082, filed 9/20/22, effective 11/1/22)

WAC 296-880-30005 Construction work. This section applies to work activities under the scope of chapter 296-155 WAC, Safety standards for construction work, unless specifically addressed in WAC 296-880-200 of this chapter.

(1) The employer must ensure that a fall arrest system, fall restraint system, or positioning device system is provided, installed, and implemented in accordance with WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of six feet or more to the ground or lower level while:

(a) Engaged in roofing work on a low pitched roof;

(b) Constructing a leading edge.

Exceptions: Employees not directly involved with constructing the leading edge, or are not performing roofing work must comply with WAC 296-880-200 Fall protection required at four feet or more.
A safety monitoring system may be used when engaged in roofing work on a low pitched roof.

(2) The employer must ensure that a fall arrest system, fall restraint system, or positioning device system is provided, installed, and implemented in accordance with WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of 10 feet or more to the ground or lower level while:

(a) Engaged in the erection or placement of structural members.

Exception: When the erection or placement of structural members is performed on or from a floor, deck, roof, or similar surface you must comply with WAC 296-880-200 Fall protection required at four feet or more.

(b) Engaged in excavation and trenching operations.

(i) Exceptions. Fall protection is not required at excavations when employees are:

(A) Directly involved with the excavation process and on the ground at the top edge of the excavation; or

(B) Working at an excavation site where appropriate sloping of side walls has been implemented as the excavation protective system.

(ii) Fall protection is required for employees standing in or working in the affected area of a trench or excavation exposed to a fall hazard of 10 feet or more; and:

(A) The employees are not directly involved with the excavation process; or

(B) The employees are on the protective system or any other structure in the excavation.

Note: Persons considered directly involved in the excavation process include:
1. Foreman of the crew.
2. Signal person.
3. Employee hooking on pipe or other materials.
4. Grade person.
5. State, county, or city inspectors inspecting the excavation or trench.
6. An engineer or other professional conducting a quality-assurance inspection.

(3) Employees are exempt from WAC 296-880-30005 under the following conditions:

(a) During initial installation of the fall protection anchor prior to engaging in any work activity, or the disassembly of the fall protection anchor after all work activities have been completed;

(b) When employees are inspecting, investigating, or assessing roof level conditions or work to be performed only on low pitch roofs prior to the start of construction work or after all construction work has been completed;

This exemption does not apply on steep pitch roofs, where construction work is underway, or when fall protection systems or equipment meeting the requirements of this chapter have been installed and

are available for workers to use for pre-work and post-work inspections, investigations, or assessments.

Note: Examples of activities the department recognizes as inspecting or estimating include:
• Measuring a roof to determine the amount of materials needed for a project;
• Inspecting the roof for damage without removing equipment or components; and
• Assessing the roof to determine what method of fall protection will be provided to employees.

Note: Examples the department does not recognize as inspecting or estimating under this exemption include:
• Delivering, staging, or storing materials on a roof; and
• Persons estimating or inspecting on roofs that would be considered a "hazardous slope" by definition.

(c) When employees must be located on vehicles, or rolling stock in order to perform their job duties.

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-40040 Warning line system requirements. Warning line systems and their use must conform to the following provisions:

Warning line system specifications used on roofs with a pitch of four in ((~~twelve~~)) 12 or less for roofing work, leading edge work and on low pitched open sided surfaces for work activities other than roofing work or leading edge work. The employer must ensure the following:

(1) Warning lines must be erected around all unprotected sides and edges of the work area.

(a) Warning lines used during roofing work:

(i) When roofing work is taking place or when mechanical equipment is not being used, the warning line must be erected not less than six feet (1.8 m) from the edge of the roof;

(ii) When mechanical equipment is being used, the warning line must be erected not less than six feet (1.8 m) from the roof edge which is parallel to the direction of mechanical equipment operation, and not less than ((~~ten~~)) 10 feet (3.1 m) from the roof edge which is perpendicular to the direction of mechanical equipment operation.

(b) Warning lines erected for leading edge work. Warning lines must be erected to separate employees who are engaged in leading edge work (between the forward edge of the warning line and the leading edge), from other work areas on the low pitched surface. The employer must ensure:

(i) The warning line is erected not less than six feet nor more than ((~~twenty-five~~)) 25 feet from the leading edge; and

(ii) ((~~When~~)) Fall arrest systems as described in WAC 296-880-40020((~~,~~)) or fall restraint systems as described in WAC 296-880-40025 ((~~are not used, the employer must implement a safety monitor system as described in WAC 296-880-40045~~)) must be used to protect employees engaged in constructing the leading edge ((~~who are working between the forward edge of the warning line and the leading edge~~)).

(c) Warning lines erected on low pitched open sided surfaces for work activities other than roofing work, or leading edge work must be erected not less than ((~~fifteen~~)) 15 feet from the unprotected sides or edges of the open sided surface.

(2) The warning line must consist of a rope, wire, or chain and supporting stanchions erected as follows:

(a) The rope, wire, or chain must be flagged at not more than six foot (1.8 m) intervals with high visibility material. Highly visible

caution or danger tape as described in (d) of this subsection, does not need to be flagged.

(b) The rope, wire, or chain must be rigged and supported in such a way that its lowest point (including sag) is no less than ((~~thirty-six~~)) 36 inches from the surface and its highest point is no more than ((~~forty-five~~)) 45 inches from the surface.

(c) After being erected, with the rope, wire or chain attached, stanchions must be capable of resisting, without tipping over, a force of at least ((~~sixteen~~)) 16 pounds (71 N) applied horizontally against the stanchion, ((~~thirty~~)) 30 inches (0.76 m) above the surface, perpendicular to the warning line, and in the direction of the unprotected sides or edges of the surface.

(d) The rope, wire, or chain must have a minimum tensile strength of ((~~five hundred~~)) 500 pounds (2.22 kN), and after being attached to the stanchions, must be capable of supporting, without breaking, the loads applied to the stanchions. Highly visible caution or danger tape may be used in lieu of rope, wire, or chain as long as it is at least three inches wide and three mils thick, and has a tensile strength of at least ((~~two hundred~~)) 200 pounds.

(e) The line must be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over.

(3) The employer must erect access paths as follows:

(a) Points of access, materials handling areas, and storage areas must be connected to the work area by a clear access path formed by two warning lines.

(b) When the path to a point of access is not in use, the employer must place a rope, wire, or chain, equal in strength and height to the warning line, across the path at the point where the path intersects the warning line erected around the work area.

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-40045 Safety monitor system requirements. Safety monitor systems and their use must conform to the following provisions:

(1) A safety monitor system may be used in conjunction with a warning line system as a method of fall protection during roofing work on low pitched roofs ((~~or leading edge work on low pitched surfaces~~)).

Note: The warning line is not required when performing roofing work on low pitched roofs less than ((~~fifty~~)) 50 feet wide. For information on determining roof widths, see WAC 296-880-500, Appendix A, Determining roof widths.

(2) When selected, the employer must ensure that the safety monitor system is addressed in the fall protection work plan, including the name of the safety monitor(s) and the extent of their training in both the safety monitor and warning line systems. The employer must ensure that the following requirements are met:

(a) The safety monitor system must not be used when adverse weather conditions create additional hazards.

(b) Employees working outside of the warning line system, (between the forward edge of the warning line and the unprotected sides or edges of a low pitched surface), must be readily distinguishable from other members of the crew that are working inside the warning

line system by wearing highly visible, distinctive, and uniform apparel.

(c) Employees must promptly comply with fall hazard warnings from the safety monitor.

(d) The employer must train a person acting in the capacity of safety monitor(s) in the function of both the safety monitor and warning line systems, and they must:

(i) Be a competent person as defined in WAC 296-880-095;

(ii) Have control authority over the work as it relates to fall protection;

(iii) Be instantly distinguishable over members of the work crew;

(iv) Perform no other duties while acting as safety monitor;

(v) Be positioned in relation to the workers under their protection, so as to have a clear, unobstructed view and be able to maintain normal voice communication;

(vi) Not supervise more than eight exposed workers at one time; and

(vii) Warn the employee when it appears that the employee is unaware of a fall hazard or is acting in an unsafe manner.

WSR 24-14-113
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed July 2, 2024, 8:55 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 24-06-070.

Title of Rule and Other Identifying Information: Prevailing wage: WAC 296-127-010(9) Definitions for chapter 296-127 WAC; WAC 296-127-140 Investigation of complaint, 296-127-160 Appeal of notice of violation, and 296-127-320 Payroll.

Hearing Location(s): On August 15, 2024, at 10:30 a.m., virtual/telephonic hearing. Join electronically (online) https://lni-wa-gov.zoom.us/j/88023479907?pwd=fas9AVSEnvezNT0PB2kCBL7RpdxJCM.1; or join by phone (audio only) 253-215-8782, Meeting ID 880 2347 9907, Passcode *326610851#. The hearing will start at 10:30 a.m. and will continue until all oral/spoken comments are received.

Date of Intended Adoption: September 17, 2024.

Submit Written Comments to: Reasa Pearson, Department of Labor and Industries (L&I), Prevailing Wage Program, P.O. Box 44540, Olympia, WA 98504-4540, email PrevailingWageRules@Lni.wa.gov, beginning July 3, 2024, 8:00 a.m., by August 15, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Reasa Pearson, phone 360-999-7226, TTY 1-800-833-6388, email Reasa.pearson@Lni.wa.gov, by August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to amend three rule sections to bring them into alignment with amendments made to the underlying statutes they help to interpret and enforce, and amend one rule section to align with current L&I practice. The changes reflect requirements in law and do not affect the purpose of the rule sections.

This proposal includes amending the following sections in rule:

WAC 296-127-010 Definitions for chapter 296-127 WAC: Update the "residential construction" definition to align with the definition for "residential construction" in RCW 39.12.017, which was created with the passage of HB 1743.

WAC 296-127-140 Investigation of complaint: Update language related to L&I's acceptance timeline of a complaint concerning the nonpayment of the prevailing rate of wage. Change the acceptance date from 30 to 60 days for public works projects. This change aligns the section with RCW 39.12.065, which was amended with the passage of SB 5088.

WAC 296-127-160 Appeal of notice of violation: Eliminate the need to submit four copies of the request for a hearing. This aligns with current L&I practice and reduces paperwork.

WAC 296-127-320 Payroll: Update language to align with RCW 39.12.120, which requires weekly certified payroll records be filed at least once a month using L&I's online system. RCW 39.12.120 was created with the passage of ESSB 5035.

Reasons Supporting Proposal: HB 1743, chapter 29, Laws of 2019, created a new section in law, RCW 39.12.017, regarding residential construction. WAC 296-127-010 must be updated to adopt the language of the statute.

SB 5088, chapter 88, Laws of 2023, amended RCW 39.12.065 regarding the timeline for a complaint concerning nonpayment of the prevailing rate of wage. WAC 296-127-140 incorporates the statutory language that was amended and must be updated to match the amended language of the statute.

ESSB 5035, chapter 242, Laws of 2019, created a new section in law, RCW 39.12.120, regarding payroll records and recordkeeping obligations. WAC 296-127-320 incorporates the statutory language.

L&I recommends updating WAC 296-127-160 to match current internal government operations, which have reduced waste by eliminating unnecessary copies of the request for hearing documents. The update would also benefit filers.

Statutory Authority for Adoption: Chapter 39.12 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Reasa Pearson, Tumwater, Washington, 360-999-7226; Implementation and Enforcement: Catherine Kuffner, Tumwater, Washington, 360-902-4550.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because proposed amendments adopt language without material change a Washington statute, and under RCW 34.05.328 (5)(b)(ii) as an amendment relates only to internal governmental operations that are not subject to violation by a person.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Scope of exemption for rule proposal:

Is fully exempt.

July 2, 2024
Joel Sacks
Director

OTS-5247.2

AMENDATORY SECTION (Amending WSR 22-24-089, filed 12/6/22, effective 1/6/23)

WAC 296-127-010 Definitions for chapter 296-127 WAC. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the department.

(4) "Assistant director" means the assistant director of the fraud prevention and labor standards (FPLS) division or his or her duly authorized deputy or representative.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7)(a) The term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least 50 percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b)(ii)(A) and (B) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a)(i) through (v) of this subsection.

(b) The term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278; or

(ii) Ordinary maintenance.

(A) Ordinary maintenance is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

(B) For housing authorities when contracting with a property management services company for purposes of operating a housing project, as defined in RCW 35.82.030. Rental and other project revenues collected by a property management services company from the housing project's tenants and used to pay administrative operating and ordinary maintenance costs incurred by the company under the terms of the contract with the authority shall be treated as private funds, and any resulting services as executed at the cost of the property management services company and the housing project's tenants, until the net operating revenues are distributed to the authority for its exclusive use and control. For the purposes of this subsection, "ordinary maintenance" only includes: Routine repairs related to unit turnover work; grounds and parking lot upkeep; and repairs and cleaning work needed to keep a property in a clean, safe, sanitary, and rentable condition that are customarily undertaken or administered by residential property management services companies. "Ordinary maintenance" does not include repairs that would be considered replacement capital repairs or scheduled regular maintenance work on plumbing, electrical, or HVAC/R systems or their components.

(8) "Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, ((~~when used solely as permanent residences. It~~)) in the following categories:

(a) Affordable housing, including permanent supportive housing and transitional housing, which may include common spaces, community rooms, recreational spaces, a management office, or offices for the purposes of service delivery;

(b) Weatherization and home rehabilitation programs for low-income households; and

(c) Homeless shelters and domestic violence shelters.

"Residential construction" does not include the utilities construction (such as water and sewer lines), or work on streets, or work on other structures ((~~(e.g., for recreation and business.)~~)) unrelated to the housing.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

WAC 296-127-140 Investigation of complaint. (1) The department shall investigate a complaint filed by an interested party unless the complaint was filed more than ((~~thirty~~)) 60 days after the date the public agency accepted the public work that gave rise to the complaint. The department may, in its sole discretion, investigate a complaint filed more than ((~~thirty~~)) 60 days after the acceptance date. However, the department may not charge a contractor with a violation of RCW 39.12.065 if the complaint is filed after the ((~~thirty~~)) 60-day limit.

The department's investigation shall determine whether a violation of RCW 39.12.065 or 39.12.050, or both, or of any other provision of chapter 39.12 RCW, occurred.

(2) If the department's investigation substantiates a complaint that alleges that a contractor has violated RCW 39.12.065, the department is required to attempt to collect unpaid wages for the contractor's employees. During the investigation, the department should be able to identify the affected employees. The department shall direct to the affected employees the best notice practicable under the circumstances, including individual notice to all employees who can be identified through reasonable effort. The notice shall inform the employee that (a) the department's final order, whether favorable or not, will apply to all employees; (b) any employee may, if he or she desires, move to intervene as a party in any hearing held as a result of the investigation; and (c) that the employee may have a private right of action to collect unpaid prevailing wages.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

WAC 296-127-160 Appeal of notice of violation. The violator or any of its sureties who are interested in the matter may request a hearing on a notice of violation. ((~~One original and four copies of~~)) The request for hearing must be filed with the director within ((~~thirty~~)) 30 days after the date the department issued the notice. The party requesting the hearing must also serve a copy of the notice on all interested sureties and, if the requestor is a surety, on the violator.

The request for hearing must be in writing and must specify:

(1) The name and address of the party requesting the hearing;

(2) The notice of violation that is being appealed;

(3) The items of the notice of violation that the requestor believes are erroneous; and

(4) The reasons the notice of violation is erroneous.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-320 Payroll. (1) Each contractor, subcontractor, or employer shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the employee's full name, address, Social Security number, trade or occupation, classification, straight ((~~time~~)) and

overtime rates, hourly rate of usual benefits ((~~as defined by WAC 296-127-014(1)~~)), and ((~~overtime~~)) hours worked each day and week, including any employee authorizations executed pursuant to ((~~WAC 296-127-022~~)) RCW 49.28.065, and the actual ((~~rate of~~)) gross wages, itemized deductions, withholdings, and net wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor ((~~shall, within ten days after it receives a written request, from the department or from any interested party as defined by RCW 39.12.010(4), file a certified copy of the payroll records with the agency that awarded the public works contract and with the department~~)), subcontractor, or employer shall file a copy of its certified payroll records using the department of labor and industries' online system at least once per month. If the department of labor and industries' online system is not used, a contractor, subcontractor, or employer shall file a copy of its certified payroll records directly with the department of labor and industries in a format approved by the department of labor and industries at least once per month.

(3) A ((~~contractor's~~)) contractor, subcontractor, or employer's noncompliance with this section shall constitute a violation of RCW 39.12.050.

WSR 24-14-122
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2024-02—Filed July 2, 2024, 12:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-061.

Title of Rule and Other Identifying Information: **The following sections in chapter 182-08 WAC are revised:** WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment?, 182-08-196 What happens if my health plan becomes unavailable?, 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete required forms?, and 182-08-199 When may an employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)?

The following sections in chapter 182-12 WAC are revised: WAC 182-12-123 Is dual enrollment in public employees benefits board (PEBB) and school employees benefits board (SEBB) prohibited?, 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment?, 182-12-180 When is an elected and full-time appointed official of the legislative and executive branch of state government, or their survivor eligible to continue enrollment in public employees benefits board (PEBB) retiree insurance coverage?, 182-12-200 May a retiring employee, a retiring school employee, or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB) or school employees benefits board (SEBB) defer enrollment under PEBB retiree insurance coverage?, 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage?, and 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty.

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend existing rules to support the PEBB program:

1. Implement PEBB Policy Resolutions:

- Amended WAC 182-08-187 to implement Resolution PEBB 2024-16 amending PEBB Policy Resolution "Error Correction" adopted on July 16, 2014.
- Amended WAC 182-08-196 to implement Resolution PEBB 2024-22 when a subscriber is involuntarily terminated by a medicare Part D plan.
- Amended WAC 182-08-197 to implement Resolution PEBB 2024-15 amending PEBB 2021-12 amending Resolution PEBB 2020-04 relating to default enrollments for an employee who fails to make a timely election.
- Amended WAC 182-08-199 to implement Resolution PEBB 2023-01 when a subscriber has a change in residence that affects medical plan availability.
- Amended WAC 182-12-123 to implement the new PEBB vision coverage in the following dual enrollment prohibitions related policy resolutions:
  - PEBB 2024-01 Amending PEBB 2021-02 employees may waive enrollment in medical
  - PEBB 2024-02 Amending Resolution PEBB 2021-03 PEBB benefit enrollment requirements when SEBB benefits are waived
  - PEBB 2024-03 Amending Resolution PEBB 2021-04 resolving dual enrollment when an employee's only medical enrollment is in SEBB
  - PEBB 2024-04 Amending Resolution PEBB 2021-05 resolving dual enrollment involving dual subscriber eligibility
  - PEBB 2024-05 Amending Resolution PEBB 2021-06 resolving dual enrollment involving a PEBB dependent with multiple medical enrollments
  - PEBB 2024-06 Amending Resolution PEBB 2021-07 resolving dual enrollment involving a member with multiple medical enrollments as a dependent
  - PEBB 2024-07 Amending Resolution PEBB 2021-08 PEBB benefit automatic enrollment when SEBB benefits are auto-disenrolled
  - PEBB 2024-10 Rescinding Resolution PEBB 2022-02 employees may waive enrollment in dental
- Amended WAC 182-12-128 to implement PEBB vision in the following policy resolutions:
  - PEBB 2024-01 Amending Resolution PEBB 2021-02 employees may waive enrollment in medical
  - PEBB 2024-08 Amending Resolution PEBB 2021-09 enrollment requirements when an employee loses dependent coverage in SEBB benefits
  - PEBB 2024-12 Fully insured vision plans
- Amended WAC 182-12-180 and 182-12-200 to implement the following policy resolutions regarding the new uniform medical plan (UMP) classic medicare plan with medicare Part D prescription drug coverage:
  - PEBB 2024-14 Non-medicare retiree enrollment requirement
  - PEBB 2024-19 UMP classic medicare enrollment
  - PEBB 2024-20 UMP classic medicare enrollment during gap months
  - PEBB 2024-21 Amending PEBB 2022-03 medicare advantage prescription drug plan enrollment during gap months
- Amended WAC 182-12-205 to implement the following policy resolutions:

- PEBB 2024-11 Amending PEBB 2022-04 deferring PEBB retiree insurance coverage when the subscriber becomes eligible
- PEBB 2024-14 Non-medicare retiree enrollment requirement
- PEBB 2024-19 UMP classic medicare enrollment
- PEBB 2024-20 UMP classic medicare enrollment during gap months
- PEBB 2024-21 Amending PEBB 2022-03 medicare advantage prescription drug plan enrollment during gap months
- PEBB 2024-26 PEBB retiree insurance coverage deferral, permanently live in a location outside of the United States.

2. Make Technical Amendments:

- Amended WAC 182-08-187 to include a subsection reference when there is a failure to enroll an employee and their dependents in PEBB benefits, revised supplemental life insurance and supplemental accidental death and dismemberment insurance enrollment information by including other WAC references, and clarified recourse for an employee who establishes eligibility and regains eligibility for the employer contribution toward PEBB benefits.
- Amended WAC 182-08-196 to include UMP classic medicare plan and medicare Part D plan.
- Amended WAC 182-08-197 to include PEBB vision, and updated subsection references and flexible spending arrangement (FSA).
- Amended WAC 182-08-199 to update FSA and to include special open enrollment events regarding a change in residence and when the PEBB program determines that there has been a substantial decrease in the providers available under a PEBB medical plan.
- Amended WAC 182-12-128 to update a subsection reference.
- Amended WAC 182-12-180 to add an exception and update reference, to remove language regarding Washington State Educational Service District, and to add UMP classic medicare plan.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.065, 41.05.160, PEBB Resolutions.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024
Wendy Barcus
Rules Coordinator

OTS-5535.1

AMENDATORY SECTION (Amending WSR 23-14-017, filed 6/23/23, effective 1/1/24)

WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment? (1) An employing agency or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify an employee of their eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2);

(b) Failure to enroll the employee and their dependents in PEBB benefits as elected by the employee, if the elections were timely;

(c) Failure to enroll an employee and their dependents in PEBB benefits as described in WAC 182-08-197 (1)(b) or (3)(c);

(d) Failure to accurately reflect an employee's premium surcharge attestation on the employee's account;

(e) Enrolling an employee or their dependent in PEBB insurance coverage when they are not eligible as described in WAC 182-12-114 or 182-12-260 and it is clear there was no fraud or intentional misrepresentation by the employee involved; or

(f) Providing incorrect information regarding PEBB benefits to the employee that they relied upon.

(2) The employing agency or the applicable contracted vendor must enroll the employee and the employee's dependents, as elected, or terminate enrollment in PEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) **Enrollment or termination.**

(a) PEBB medical ((~~and~~)), dental, and vision 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 (5) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

Exception: When an employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(b) Basic life, supplemental life insurance, basic accidental death and dismemberment (AD&D), supplemental AD&D, employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance ((~~(unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)) 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, basic AD&D, employer-paid LTD insurance, and employee-paid LTD insurance begin on that date;~~

~~**Exception:** When an employee who is called to active duty in the uniformed services under USERRA loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.~~

~~(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment 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 on 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) Supplemental life, supplemental AD&D, and employee-paid LTD insurance 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 employee-paid LTD insurance during the period of leave as described in WAC 182-12-133, employee-paid LTD insurance 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 supplemental life insurance, supplemental AD&D insurance, and employee-paid LTD insurance under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.~~

~~(d)~~)) will begin for a newly eligible employee as described in WAC 182-12-114 and for an employee regaining eligibility as described in WAC 182-08-197(3). An employee who regains eligibility may need to submit evidence of insurability for supplemental life insurance or employee-paid LTD insurance as required in WAC 182-08-197(3).

(c) If the employee is eligible and elects (or elected) to enroll in the ((~~medical~~)) flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in a ((~~medical~~)) FSA, limited purpose FSA, or DCAP as elected, 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;

((~~(c)~~)) (d) If the employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's PEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) **Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD starting the date PEBB benefits begins as described in subsections (3) and (5)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of their eligibility for PEBB benefits, the state agency may only collect the employee contribution for

health plan premiums and applicable premium surcharges for coverage for the months after the employee was notified.

(b) When an employing agency fails to correctly enroll the amount of employee-paid LTD insurance 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 24 months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When a premium refund is due to the employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent 24 months of coverage. The employing agency is responsible for additional months of premium refund.

(c) When an employing agency mistakenly enrolls an employee or their dependent as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the employing agency to the employee without rescinding the insurance coverage.

(5) **Recourse.**

(a) ((~~Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established~~)) An employee who establishes eligibility will have benefits begin as described in WAC 182-12-114. An employee who regains eligibility for the employer contribution toward PEBB benefits will have benefits begin as described in WAC 182-08-197(3). 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 (3)(b)((~~,~~)) and (c) ((~~and (d)~~)) of this section, the employing agency must work with the employee, and receive approval from the authority, to implement retroactive PEBB benefits within the following parameters:

(i) Retroactive enrollment in a PEBB insurance coverage;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid by the employee or dependent for medical ((~~and~~)), dental, and vision premiums;

(iv) Reimbursement of amounts paid by the employee for the premium surcharges;

(v) Other legal remedy received or offered; or

(vi) 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 noncovered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 23-14-016, filed 6/23/23, effective 1/1/24)

WAC 182-08-196 What happens if my health plan becomes unavailable? (1) A subscriber must elect a new health plan when their previously selected health plan becomes unavailable due to a change in contracting service area as described below:

(a) When a health plan becomes unavailable during the plan year, a subscriber must elect a new health plan no later than 60 days after the date their previously selected health plan becomes unavailable.

(i) An employee must submit the required forms to their employing agency electing their new health plan.

(ii) Any other subscriber must submit the required forms to the PEBB program electing their new health plan.

(iii) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in health plan begins on that day.

(b) When a health plan becomes unavailable at the beginning of the next plan year, a subscriber must elect a new health plan no later than the last day of the public employees benefits board (PEBB) annual open enrollment.

(i) An employee must submit the required forms to their employing agency electing their new health plan.

(ii) Any other subscriber must submit the required forms to the PEBB program electing their new health plan.

(iii) The effective date of the change in health plan will be January 1st of the following year.

(c) A subscriber who fails to elect a new health plan within the required time period as required in (a) or (b) of this subsection will be enrolled in a health plan designated by the director or designee.

(2) A subscriber must elect a new health plan when their previously selected health plan becomes unavailable due to the subscriber or subscriber's dependent ceasing to be eligible for their current health plan because of enrollment in medicare as described below:

(a) The required forms electing a new health plan must be received no later than 60 days after the date their previously selected health plan becomes unavailable.

Exception: The required forms electing a new medicare advantage (MA) ((~~or~~)) plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan must be received no later than two months after the date their previously selected health plan becomes unavailable.

(i) An employee must submit the required forms to their employing agency electing their new health plan.

(ii) Any other subscriber must submit the required forms to the PEBB program electing their new health plan.

(iii) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in health plan begins on that day except for a MA ((~~or~~)) plan, MA-PD plan, or the UMP Classic medicare plan which will begin the first day of the month following the date the form is received.

(b) A subscriber who is enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA), and fails to elect a new health plan within the required time period as required in this subsection, will not be eligible to receive contributions to the HSA. A subscriber will be liable for any tax penalties resulting from contributions made when they are no longer eligible.

(3) A subscriber must elect a new medical plan when their previously selected medical plan becomes unavailable due to a change in their residence as described below.

(a) When a subscriber's medical plan becomes unavailable during the plan year, a subscriber must elect a new medical plan no later than 60 days after the date their previously selected medical plan becomes unavailable as described in WAC 182-08-198 (2)(e).

(i) An employee must submit the required forms to their employing agency electing their new medical plan.

(ii) Any other subscriber must submit the required forms to the PEBB program electing their new medical plan.

(iii) The effective date of the change in medical plan will be the first day of the month following the later of the date the medical plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in medical plan begins on that day except for a MA ((~~or~~)) plan, a MA-PD plan, or the UMP Classic medicare plan which will begin the first day of the month following the date the form is received.

(b) A subscriber who fails to elect a new medical plan within the required time period as required in (a) of this subsection will be enrolled in a public employees benefits board medical plan designated by the director or designee.

(4) When a subscriber or their dependent must be disenrolled by a MA ((~~or~~)) plan, MA-PD plan, or a medicare Part D plan as required by federal law, the subscriber and their enrolled dependents will be enrolled in a PEBB medical plan as designated by the director or designee. The new medical plan coverage will begin the first day of the month following the date the MA ((~~or~~)) plan, the MA-PD plan, or the UMP Classic medicare plan is terminated.

(5) A subscriber enrolled in a health plan as described in subsection (1)(c), (2)(b), (3)(b), or (4) of this section may not change health plans except as allowed in WAC 182-08-198.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete 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 their enrollment elections, including an election to waive enrollment provided the employee is eligible to waive as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency or contracted vendor. Their employing agency or contracted vendor must receive the forms no later than 31 days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An employee may apply for enrollment in supplemental life insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For an employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. An employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at any time during the calendar year without evidence of insurability by submitting the required form to the contracted vendor.

(ii) Employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. An employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their employing agency. An employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their employing agency or the contracted vendor. For an employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the employing agency receives the required form requesting to reduce or decline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical allowing medical premiums to be 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 their state agency. The form must be received by their state agency no later than 31 days after the employee becomes eligible for PEBB benefits.

(iv) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's ((~~medical~~)) flexible spending arrangement (FSA), limited purpose FSA, dependent care assistance program (DCAP), or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to their state agency. The form must be received by the state agency no later than 31 days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or the authority's contracted vendor in the case of life insurance and AD&D insurance, does not receive the employee's required forms indicating medical, dental, vision, life insurance, AD&D insurance, and LTD insurance elections, and the employee's tobacco use status attestation within 31 days of the employee becoming eligible, their enrollment will be as follows for those elections not received within 31 days:

(i) A medical plan determined by the health care authority (HCA);

(ii) A dental plan determined by the HCA;

(iii) A vision plan determined by the HCA;

(iv) Basic life insurance;

((~~(iv)~~)) (v) Basic AD&D insurance;

((~~(v)~~)) (vi) Employer-paid LTD insurance and employee-paid LTD insurance;

((~~(vi)~~)) (vii) Dependents will not be enrolled; and

((~~(vii)~~)) (viii) A tobacco use premium surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB benefits ends according to WAC 182-12-131. When an employee's employment ends, participation in the salary reduction plan ends.

(3) When an employee regains eligibility for the employer contribution toward PEBB benefits, including following a period of leave described in WAC 182-12-133(1), or after being between periods of leave as described in WAC 182-12-142 (1) and (2), or 182-12-131 (3)(e), PEBB medical ((~~and~~)), dental, and vision begin on the first day of the month the employee is in pay status eight or more hours, or the first

day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e).

Note: When an employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment if the employee chooses to waive enrollment 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, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than 31 days after the employee regains eligibility, except as described in (a)(i) and (b) of this subsection:

(i) An employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) An employee who was eligible to continue supplemental life insurance but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution;

(iii) An employee who was eligible to continue employee-paid LTD insurance but discontinued that coverage must submit evidence of insurability for employee-paid LTD insurance to the contracted vendor when they regain eligibility for the employer contribution.

(b) An employee or faculty in any of the following circumstances does not have to return a form indicating employee-paid LTD insurance elections. Their employee-paid LTD insurance will be automatically reinstated effective the first day of the month they are in pay status eight or more hours or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e):

(i) The employee continued to self-pay for their employee-paid LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue employee-paid LTD insurance after losing eligibility for the employer contribution.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the required forms within 31 days of the employee regaining eligibility, the employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through ((~~(vii)~~)) (viii) of this section, except as described in (a)(i) and (b) of this subsection.

(d) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116) the employee may enroll in the ((~~medical~~)) FSA, limited purpose FSA, DCAP, or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to the contracted vendor or their state agency. The contracted vendor or employee's state agency must receive the form no later than 31 days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the 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 a DCAP, a ((~~medical~~)) FSA, or a limited purpose FSA until the beginning of the next plan year, unless the time between employments is 30 days or less and within the current plan

year. The employee must notify their new state agency of the transfer by providing the new state agency's personnel, payroll, or benefits office the required form no later than 31 days after the employee's first day of work with the new state agency.

(5) An employee's PEBB benefits elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB benefits for one month or more. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB benefits elections also remain the same when an employee has a break in employment that does not interrupt their employer contribution toward PEBB benefits.

(6) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement.

Note: When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they may enroll in PEBB retiree insurance coverage as described in WAC 182-12-171, or continue in a deferred status if they meet the requirements in WAC 182-12-200 or 182-12-205.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-08-199 When may an employee enroll, or revoke an election and make a new election under the premium payment plan, ((~~medical~~)) flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)? An employee who is eligible to participate in the salary reduction plan as described in WAC 182-12-116 may enroll, or revoke their election and make a new election under the premium payment plan, ((~~medical~~)) flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114 and enrolling as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their employing agency. An eligible employee may elect to enroll or reenroll in the ((~~medical~~)) FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their employing agency or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

(a) Employees cannot enroll in a ((~~medical~~)) FSA and a limited purpose FSA in the same year.

(b) Employees enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a ((~~medical~~)) FSA in the same plan year. Employees who elect enrollment in the CDHP with a HSA and a ((~~medical~~)) FSA will only be enrolled in a CDHP with a HSA.

(c) Employees who enroll in a CDHP with a HSA during the annual open enrollment and have a carryover amount from a ((~~medical~~)) FSA, will be enrolled in a limited purpose FSA and the carryover amount will be deposited into the limited purpose FSA.

(d) Employees who are not enrolled in a CDHP with a HSA and elect both a ((~~medical~~)) FSA and a limited purpose FSA will be enrolled in the ((~~medical~~)) FSA.

(3) **During a special open enrollment:** An employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, ((~~medical~~)) FSA, limited purpose 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 Treasury regulations, 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 form to their employing agency. The employing agency must receive the required form and evidence of the event that created the special open enrollment no later than 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** An employee may enroll or revoke their election and elect to opt out of 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 election to opt out 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 state registered domestic partnership when the dependent is a tax dependent of the employee;

• Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets public employee benefits board (PEBB) eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;

• An eligible dependent child turns age 26 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 has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;

(vii) Employee or an employee's dependent has a change in residence that affects health plan availability. If the employee has a change in residence and the employee's current medical plan is no longer available, the employee must select a new medical plan as described in WAC 182-08-196(3);

(viii) 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 and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) Employee or an employee's dependent enrolls in 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;

(xi) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB medical plan coverage from medicaid or CHIP;

(xii) Employee or an employee's dependent enrolls in coverage under medicare or the employee or an employee's dependent loses eligibility for coverage under medicare;

(xiii) Employee or an employee's dependent's current medical plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) requires evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiv) Employee or an employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the employee or the employee's dependent. 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;
- Treatment following a recent organ transplant;
- A scheduled surgery;
- Recent major surgery still within the postoperative period; or
- Treatment for a high-risk pregnancy.

(xv) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(xvi) The PEBB program determines that there has been a substantial decrease in the providers available under a PEBB medical plan.

If the employee is having premiums taken from payroll on a pretax basis, a medical 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~~)) FSA and limited purpose FSA.** An employee may enroll or revoke their election and make a new election under the ((~~medical~~)) FSA or limited purpose 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 new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. 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 state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;

• Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age 26 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 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 ((~~medical~~)) FSA or limited purpose FSA;

(v) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent enrolls in 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 enrolls in coverage under medicare.

(c) **DCAP.** An employee may enroll or revoke their election and make a new election under the DCAP when any one of the following spe-

cial open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. 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 state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(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 an employer-based DCAP during its annual open enrollment that does not align with the PEBB annual open enrollment;

(iv) Employee changes dependent care provider; the change to the DCAP election amount 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 26 U.S.C. Sec. 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 election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in IRC 26 U.S.C. Sec. 152.

OTS-5536.2

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-123 Is dual enrollment in public employees benefits board (PEBB) and school employees benefits board (SEBB) prohibited? Public employees benefits board (PEBB) medical ((~~and~~)), dental, and vision coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the PEBB program or school employees benefits board (SEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in PEBB medical ((~~and~~)), PEBB dental, and PEBB vision coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the PEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-12-128.

(3) A dependent enrolled in PEBB medical ((~~or~~)), PEBB dental, or PEBB vision 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.

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent. If the employee's spouse, state registered domestic partner, or parent does not take action to remove the employee (who is enrolled as a dependent) from their subscriber account, the PEBB program will automatically disenroll the employee's enrollment as a dependent the last day of the month before the employee's enrollment in PEBB benefits begins as described in WAC 182-12-114.

Exception: An enrolled dependent who becomes newly eligible for PEBB benefits as an employee may be dual-enrolled in PEBB medical ((~~and~~)), dental, and vision 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.

(b) If the employee elects to waive their enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent.

(4) A child who is eligible for PEBB medical ((~~and~~)), PEBB dental, and PEBB vision under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in PEBB medical ((~~and~~)), a single enrollment in PEBB dental, and a single enrollment in PEBB vision.

(5) When an employee is eligible for the employer contribution toward PEBB benefits 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 stack to establish or maintain eligibility as described in 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, they must notify their other employing agency no later than 60 days from the date PEBB benefits end through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's elections remain the same when an employee transfers their enrollment under one employing agency to another employing agency without a break in PEBB benefits for one month or more, as described in (b) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the PEBB and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. An employee must elect to enroll in PEBB benefits as described in WAC 182-08-197, waive enrollment as described in WAC 182-12-128, or remove eligible dependents as described in WAC 182-12-262. If the employee takes no action to resolve the dual enrollment, the PEBB program or the SEBB program will automatically enroll or automatically disenroll the individual as described in ((~~(d) through (h)~~)) (c) through (g) of this subsection.

(a) An eligible employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision as described in WAC 182-12-128. An employee who waives en-

rollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental and PEBB vision.

(b) ((~~An eligible employee who waives enrollment in PEBB medical when they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in WAC 182-12-128, and are not enrolled in SEBB medical, may waive enrollment in PEBB dental only if they are enrolled in both SEBB dental and SEBB vision as an eligible dependent in the SEBB program.~~

~~(c)~~)) A school employee in the SEBB program who waives SEBB medical, SEBB dental, and SEBB vision for PEBB medical must be enrolled in PEBB dental and PEBB vision. If the school employee is not already enrolled in PEBB dental((~~,~~)) and PEBB vision the PEBB program will automatically enroll the school employee in the associated subscriber's PEBB dental and PEBB vision.

((~~(d)~~)) (c) If the employee is enrolled only in PEBB dental and PEBB vision, and is also enrolled in SEBB medical, and no action is taken to resolve their dual enrollment, the employee will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB dental and PEBB vision in which they are enrolled. If the employee is not already enrolled in SEBB dental or SEBB vision, the SEBB program will automatically enroll them in both as described in WAC 182-31-070 (6)(g). The employee's enrollment in PEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

((~~(e)~~)) (d) If the employee is enrolled in PEBB medical and is also a school employee in the SEBB program and enrolled in SEBB medical, and the employee has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken by the employee to resolve their dual enrollment, they will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB medical ((~~and~~)), PEBB dental, and PEBB vision. The employee's enrollment in PEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the employee is not enrolled in any medical under either the PEBB or SEBB program but is enrolled ((~~only~~)) in PEBB dental, PEBB vision, SEBB dental, and SEBB vision ((~~(with or without enrollment in SEBB dental)~~)), the employee will remain in SEBB ((~~vision and if enrolled, SEBB dental. If the employee is not already enrolled in SEBB dental, the SEBB program will automatically enroll them as described in WAC 182-31-070 (6)(g)~~)) benefits. The PEBB program will automatically disenroll the employee from PEBB dental and PEBB vision.

((~~(f)~~)) (e) If the employee's dependent is enrolled in any PEBB medical ((~~or~~)), PEBB dental, or PEBB vision plan, and the dependent is also a school employee in the SEBB program and enrolled in SEBB medical, and no action is taken by either the employee or the dependent to resolve the dependent's dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical ((~~and~~)), PEBB dental, and PEBB vision in which they are enrolled.

((~~(g)~~)) (f) If the employee's dependent is enrolled in both PEBB medical and SEBB medical as a dependent and has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken to resolve the dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical ((~~and~~)), PEBB dental, and PEBB vision if they are enrolled. If the employee's dependent who is eligible as a dependent in both the PEBB and SEBB pro-

grams is not enrolled in any medical but is enrolled ((~~only in PEBB dental and SEBB vision (with or without SEBB dental)~~)) in both a PEBB and SEBB dental plan, PEBB and SEBB vision plan, or any combination of these coverages as a dependent, the dependent will remain in SEBB ((~~vision and if enrolled, SEBB dental~~)) benefits. The PEBB program will automatically disenroll the employee's dependent from PEBB ((~~dental~~)) benefits.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

((~~(h)~~)) (g) If the employee's dependent, who is also a school employee in the SEBB program who the SEBB program automatically disenrolled from SEBB dental and SEBB vision, the PEBB program will automatically enroll the employee's dependent in PEBB dental and PEBB vision, if they are not already enrolled.

((~~(i)~~)) (h) If the employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the employee will be required to return from waived enrollment as described in WAC 182-12-128 (3)(b).

((~~(j)~~)) (i) If the PEBB program automatically disenrolls an individual from PEBB medical ((~~or~~)), PEBB dental, or PEBB vision to resolve their dual enrollment as described in ((~~(e), (f), or (g)~~)) (d), (e), or (f) of this subsection, but later determines that the employee did take action to resolve their dual enrollment within the required timelines, the PEBB program will reinstate coverage retroactive to the first of the month in which the individual was disenrolled.

(7) A retiree who defers enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB or SEBB and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC 182-12-200 or defer enrollment as described in WAC 182-12-205.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment? An employee may waive enrollment in public employees benefits board (PEBB) medical if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. They may not waive enrollment in PEBB medical if they are enrolled in PEBB retiree insurance coverage. An employee who waives enrollment in PEBB medical must enroll in PEBB dental, PEBB vision, basic life insurance, basic accidental death and dismemberment insurance, and employer-paid long-term disability (LTD) insurance (unless the employing agency does not participate in these PEBB insurance coverages). For an employing agency that participates in LTD insurance, an employee will also be enrolled in employee-paid LTD insurance automatically unless the employee declines their employee-paid LTD insurance as described in WAC 182-08-197.

Exception: An employee may waive their enrollment in PEBB medical to enroll in school employees benefits board (SEBB) medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental and PEBB vision.

(1) To waive enrollment in PEBB medical, the employee must submit the required form to their employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee may waive PEBB medical when they become eligible for PEBB benefits. The employee must indicate their election to waive enrollment in PEBB medical on the required form and submit the form to their employing agency. The employing agency must receive the form no later than 31 days after the date the employee becomes eligible for PEBB benefits (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 may waive PEBB medical during the annual open enrollment. The required form must be received by 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 may waive PEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than an employee gaining initial eligibility or regaining eligibility for PEBB benefits.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than 60 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 to the employing agency.

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 may not enroll dependents in PEBB medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. 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. A special open enrollment allows an employee to revoke their election and make a new election 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 their employing agency. The employing agency must receive the form no later than 60 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 to the employing agency.

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 for the employee will begin on the first day of the month in which the event occurs. PEBB medical for the newly born child, newly adopted child, spouse, or state registered domestic partner will begin as described in WAC 182-12-262 (3)(a)(iv).

If an employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the health care authority will notify the employee of their removal from the SEBB subscriber's account and that they have experienced a special enrollment event. The employee will be required to return from waived enrollment and elect PEBB medical ((~~and~~)), PEBB dental, and PEBB vision. If the employee's employing agency does not receive the employee's required forms indicating their medical ((~~and~~)), dental, and vision elections within 60 days of the employee losing SEBB medical, SEBB dental, and SEBB vision, they will be defaulted into employee-only PEBB medical ((~~and~~)), PEBB dental, and PEBB vision as described in WAC 182-08-197 (1)(b)(i) ((~~and (ii)~~)) through (iii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the employee to enroll in PEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, 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 state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(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 has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Employee or an employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(f) 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 and that change in residence resulted in the dependent losing their health insurance;

(g) A court order requires the employee or any other individual to provide a health plan for an eligible dependent of the employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Employee or an employee's dependent enrolls in 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;

Note: An employee may only return from having waived PEBB medical for the events described in (h) of this subsection. An employee may not waive their PEBB medical for the events described in (h) of this subsection.

(i) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(j) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 22-13-160, filed 6/21/22, effective 1/1/23)

WAC 182-12-180 When is an elected and full-time appointed official of the legislative and executive branch of state government, or their survivor eligible to continue enrollment in public employees benefits board (PEBB) retiree insurance coverage? (1) An elected and full-time appointed official of the legislative and executive branch of state government is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage under the same terms as an outgoing legislator, when they voluntarily or involuntarily leave public office. The following officials are eligible if they meet the procedural requirements as described in subsection (3) of this section:

(a) A member of the state legislature;

(b) A statewide elected official of the executive branch;

(c) An executive official appointed directly by the governor as the single head of an executive branch agency; or

(d) An official appointed directly by a state legislative committee as the single head of a legislative branch agency or an official appointed to secretary of the senate or chief clerk of the house of representatives.

(2) The spouse, state registered domestic partner, or child of an official described in subsection (1) of this section who loses eligibility due to the death of the official may enroll as a survivor under PEBB retiree insurance coverage as described in (a) and (b) of this subsection and must meet procedural requirements to enroll or defer enrollment as described in subsection (3) of this section.

(a) The official's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The official's child may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(3) **Procedural requirements.** An official described in subsection (1) of this section or their survivor described in subsection (2) of this section must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through ((~~(d)~~)) (e) of this subsection:

(a) For an official to enroll in PEBB retiree insurance coverage the required forms must be received by the PEBB program no later than 60 days after the official leaves public office. The effective date of PEBB retiree insurance coverage is the first day of the month after the official leaves public office;

For a survivor to enroll in PEBB retiree insurance coverage, the required forms must be received by the PEBB program no later than 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the date of the official's death or the first day of the month after the survivor's PEBB insurance coverage ends;

Note: Enrollment in the PEBB program's medicare advantage (MA) ((~~or~~)) plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~Uniform Medical Plan (UMP) Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(b) The official's or survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than 45 days after the official's or survivor's election period ends as described in (a) of this subsection, except as described in WAC 182-08-180 (1)(a). Following the official's or survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c);

(c) If an official or a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the official or survivor;

Exceptions: (1) If an official or a survivor selects a medicare supplement plan ((~~or~~)), a MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If an official or a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If the official or survivor selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(d) An official or survivor who is nonmedicare must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both dental and vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.

(e) To defer enrollment in PEBB retiree insurance coverage the official or the survivor must meet deferral enrollment requirements as described in WAC 182-12-200 or 182-12-205.

(4) If the official, an enrolled dependent, or their survivor is eligible for medicare or becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(5) An official described in subsection (1) of this section shall be included in the term "retiree" or "retiring employee" as used in chapters 182-08, 182-12, and 182-16 WAC.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-200 May a retiring employee, a retiring school employee, or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB) or school employees benefits board (SEBB) defer enrollment under PEBB retiree insurance coverage? (1) A retiring employee or a retiring school employee may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage at retirement if they meet substantive eligibility requirements as described in WAC 182-12-171(2) or as described in WAC 182-12-180(1). An enrolled retiree may defer enrollment after enrolling in PEBB retiree insurance coverage. Enrollment in PEBB retiree insurance coverage may be deferred when they are enrolled as a dependent in a health plan sponsored by PEBB or school employees benefits board (SEBB), including such coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage.

(2) A retiring employee, a retiring school employee, or a retiree who defers enrollment in PEBB retiree insurance coverage defers enrollment in PEBB medical ((~~and~~)), PEBB dental, and PEBB vision. A retiree must be enrolled in PEBB medical to enroll in PEBB dental except for a nonmedicare retiree must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. A retiree who defers enrollment also defers enrollment for all eligible dependents. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(3) A retiring employee, a retiring school employee, or a retiree who defers enrollment as described in this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in a health plan sponsored by PEBB or SEBB. Evidence of continuous enrollment in a health plan sponsored by a Washington state educational service district may be required if a retiring employee, a retiring school employee, or a retiree deferred enrollment under this section prior to January 1, 2024. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB, and between each period of enrollment in qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) during the deferral period:

(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 educational service district~~)), or SEBB ends, or such coverage under COBRA or continuation coverage ends. The required forms to enroll must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends. To continue in a deferred status, the retiree must defer enrollment as described in WAC 182-12-205.

Note: Enrollment in the PEBB program's medicare advantage (MA) ((~~or~~)) plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~Uniform Medical Plan (UMP) Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(c) If a retiree elects to enroll a dependent in PEBB health plan coverage as described in this subsection, the dependent must be enrolled in the same PEBB medical or PEBB dental plan as the retiree.

Exceptions: (1) If a retiree selects a medicare supplement plan ((~~or~~)), a MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a retiree selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If a retiree selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(d) A nonmedicare retiree must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage? (1) The following individuals may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage:

(a) A retiring employee or a retiring school employee;

(b) A dependent becoming eligible as a survivor; or

(c) A retiree or a survivor enrolled in PEBB retiree insurance coverage.

(2) A subscriber described in subsection (1) of this section who defers enrollment in PEBB retiree insurance coverage also defers enrollment for all eligible dependents, except as described in subsection (3)(c) of this section.

(3) When a subscriber described in subsection (1) of this section ((~~who~~)) chooses to defer enrollment in PEBB retiree insurance coverage as described in (a) through (e) of this subsection, they must maintain continuous enrollment in one or more qualifying coverages as described in (a) through (e) of this subsection or WAC 182-12-200. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. When a subscriber chooses to defer enrollment in PEBB retiree insurance coverage as described in (f) of this subsection; evidence of continuous enrollment in a qualified coverage is waived as described in subsection (6)(f) of this section.

A subscriber who chooses to defer enrollment, defers enrollment in PEBB medical ((~~and~~)), PEBB dental, and PEBB vision. A subscriber must be enrolled in PEBB medical to enroll in PEBB dental except for a nonmedicare retiree must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(a) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in employer-based group medical as an employee or the dependent of an employee, or such medical insurance continued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in a federal retiree medical plan.

(c) Beginning January 1, 2006, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109. 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, subscribers who are not eligible for Parts A and B of medicare may defer enrollment in PEBB retiree insurance coverage when the subscriber is enrolled in exchange coverage.

(e) Beginning July 17, 2018, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

(f) Beginning January 1, 2025, subscribers who are enrolled in medicare may defer enrollment in PEBB retiree insurance coverage when they permanently live in a location outside of the United States.

(4) To defer enrollment in PEBB retiree insurance coverage, the required forms must be submitted to the PEBB program.

(a) For a retiring employee or a retiring school employee who meets the substantive eligibility requirements as described in WAC 182-12-171(2), enrollment will be deferred the first of the month following the date their own employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than 60 days after their own employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) For an official leaving public office who meets the requirements as described in WAC 182-12-180(1), enrollment will be deferred the first of the month following the date the official leaves public office. The forms must be received by the PEBB program no later than 60 days after the official leaves public office.

(c) For an employee or a school employee determined to be retroactively eligible for disability retirement who meets the requirements as described in WAC 182-12-211 (1)(a) through (c), enrollment will be deferred as described in WAC 182-12-211 (2) or (3). The forms and formal determination letter must be received by the PEBB program no later than 60 days after the date on the determination letter.

(d) For an eligible survivor, the dependent must meet the requirements described below and the forms must be received by the PEBB program within the time described:

(i) For a survivor of an employee or a school employee who meets the requirements as described in WAC 182-12-265 (1) or (3), enrollment will be deferred the first of the month following the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage((~~, educational service district coverage,~~)) or school employees benefits board (SEBB) insurance coverage ends. The forms must be received by the PEBB program no later than 60 days after the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage((~~,~~

~~educational service district coverage,~~)) or SEBB insurance coverage ends.

(ii) For a survivor of an official who meets the requirements as described in WAC 182-12-180(2), enrollment will be deferred the first of the month following the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The forms must be received by the PEBB program no later than 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends.

(iii) For a survivor of a retiree who meets the requirements as described in WAC 182-12-265(2), enrollment will be deferred the first of the month following the date of the retiree's death. The forms must be received by the PEBB program no later than 60 days after the retiree's death.

(iv) For a survivor of an emergency service personnel killed in the line of duty who meets the requirements as described in WAC 182-12-250, enrollment will be deferred the first of the month following the later of one of the events described in WAC 182-12-250 (5)(a) through (d). The forms must be received by the PEBB program no later than 180 days after the later of one of the events described in WAC 182-12-250 (5)(a) through (d).

(e) For an enrolled retiree or survivor who submits the required forms to defer enrollment in PEBB retiree insurance coverage, enrollment will be deferred effective the first of the month following the date the required forms are received by the PEBB program. If the forms are received on the first day of the month, enrollment will be deferred effective that day.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage ((~~plan (MA), then~~)) (MA) plan, a medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan, the enrollment in PEBB retiree insurance coverage will be deferred effective the first of the month following the date the ((~~MA~~)) plan disenrollment form is received.

(5) A retiree who meets substantive eligibility requirements in WAC 182-12-171(2) and whose own employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to have submitted the deferral form at that time, but must meet all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) A subscriber described in subsection (1) of this section who defers enrollment ((~~while enrolled in qualifying coverage~~)) as described in subsection (3)(a) through ((~~(e)~~)) (f) of this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below ((~~and~~)). A subscriber who defers enrollment as described in subsection (3)(a) through (e) of this section must provide evidence of continuous enrollment in one or more qualifying coverages as described in subsection (3)(a) through (e) of this section. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. A subscriber who defers enrollment as described in subsection (3)(f) of this section must provide proof of enrollment in medicare parts A and B; evidence of continuous enrollment in a qualified coverage is waived as described in (f) of this subsection:

(a) A subscriber who defers enrollment while enrolled in employer-based group medical 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 to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms 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 or such coverage under COBRA coverage or continuation coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical coverage, COBRA coverage, or continuation coverage ends.

Note: Enrollment in the PEBB program's MA ((~~or medicare advantage prescription drug (MA-PD)~~)) plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~Uniform Medical Plan (UMP) Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(b) A subscriber who defers 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 to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms 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 forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

Note: Enrollment in the PEBB program's MA ((~~or~~)) plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~UMP Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(c) A subscriber who defers enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109 may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms 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 forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

Note: Enrollment in the PEBB program's MA ((~~or~~)) plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~UMP Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree or survivor was also determined eligible 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 forms must be received by the PEBB program no later than the last day of the calendar year in which the medicaid coverage ends.

(d) A subscriber who defers 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 to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms 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 forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

Note: Enrollment in the PEBB program's MA ((~~or~~)) plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~UMP Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(e) A subscriber who defers enrollment while enrolled in CHAMPVA will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms 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 CHAMPVA coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after CHAMPVA coverage ends.

Note: Enrollment in the PEBB program's MA ((~~or~~)) plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~UMP Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(f) A subscriber enrolled in medicare who defers enrollment while permanently living outside of the United States may enroll in a PEBB health plan by submitting the required forms and proof of enrollment

in medicare parts A and B. Evidence of continuous enrollment in a qualified coverage is waived while a subscriber enrolled in medicare lives outside of the United States:

(i) During the PEBB annual open enrollment period. The required forms 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 subscriber permanently moved back to the United States. The required forms and proof of enrollment in medicare parts A and B must be received by the PEBB program no later than 60 days after the date of the permanent move or the date the subscriber provides notification of such move, whichever is later. PEBB health plan coverage begins the first day of the month after the permanent move or the date the subscriber provides notification of such move, whichever is later.

Note: Enrollment in the PEBB program's MA plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(7) A subscriber described in subsection (1) of this section who defers enrollment ((~~while enrolled in qualifying coverage~~)) as described in subsection (3)(a) through ((~~(e)~~)) (f) of this section may later enroll themselves and their dependents in a PEBB health plan if they receive formal notice that the authority has determined it is more cost-effective to enroll them or their eligible dependents in PEBB medical than a medical assistance program.

(8) If a subscriber elects to enroll a dependent in PEBB health plan coverage as described in subsection (6) or (7) of this section, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the subscriber.

Exceptions: (1) If a subscriber selects a medicare supplement plan ((~~or~~)), a MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If a subscriber selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(9) A nonmedicare subscriber must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.

(10) An enrolled retiree or a survivor who requests to voluntarily terminate their enrollment in PEBB retiree insurance coverage must do so in writing. The written termination request must be received by the PEBB program. A retiree or a survivor who voluntarily terminates their enrollment in a PEBB health plan also terminates enrollment for all eligible dependents. Once coverage is terminated, a retiree or a survivor may not enroll again in the future unless they reestablish eligibility for PEBB insurance coverage by becoming newly eligible. Enrollment in a PEBB health plan will terminate on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, enrollment will terminate on the last day of the previous month.

Exception: When a subscriber or their dependent is enrolled in a MA plan, ((~~then~~)) a MA-PD plan, or the UMP Classic medicare plan, the enrollment will terminate on the last day of the month when the ((~~MA~~)) plan disenrollment form is received.

((~~(10)~~)) (11) When a retiree becomes eligible for the employer contribution toward PEBB or SEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement.

Note: When the subscriber is no longer eligible for the employer contribution toward PEBB or SEBB benefits, they may enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 or continue in a deferred status if they meet the requirements described in WAC 182-12-200 or this section.

AMENDATORY SECTION (Amending WSR 22-13-160, filed 6/21/22, effective 1/1/23)

WAC 182-12-250 Public employees benefits board (PEBB) 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 or defer enrollment 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 26. 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 26.26A.100.

(4) Surviving spouses, state registered domestic partners, and children who are eligible for medicare must enroll in both Parts A and B of medicare.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(5) The survivor (or agent acting on their behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in PEBB retiree insurance coverage as described in subsection

(7) of this section. The forms must be received by the PEBB program no later than 180 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 they are 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 PEBB 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 60 days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29th, the survivor may request health plan enrollment to begin on July 1st); or

(c) The first of the month after the date that the PEBB program receives the required forms.

Note: Enrollment in the PEBB program's medicare advantage (MA) ((~~or~~)) plan, medicare advantage-prescription drug (MA-PD) plan , or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~Uniform Medical Plan (UMP) Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums and applicable premium surcharges must be paid by the survivor as described in WAC 182-08-180 (1)(c) 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 PEBB retiree insurance coverage:

(a) Enroll in a PEBB health plan. Any of the following enrollment applies to survivors who are not enrolled in medicare. The enrollment described in (a)(i) and (ii) of this subsection applies to survivors enrolled in medicare:

(i) Enroll in PEBB medical; ((~~or~~))

(ii) Enroll in PEBB medical and PEBB dental((~~.~~));

(iii) ((~~Dental only is not an option.~~)) Enroll in PEBB medical and PEBB vision; or

(iv) Enroll in PEBB medical, PEBB dental, and PEBB vision.

(b) Defer enrollment:

(i) Survivors may defer enrollment in PEBB retiree insurance coverage ((~~if continuously enrolled in qualifying coverage~~)) as described in WAC 182-12-205(3).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(6). Survivors who defer enrollment as described in WAC 182-12-205 (3)(a) through (e) must provide evidence that they were

continuously enrolled in one or more qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) when enrolling in a PEBB health plan. Survivors who defer enrollment as described in WAC 182-12-205 (3)(f) must provide proof of enrollment in medicare parts A and B; evidence of continuous enrollment in a qualified coverage is waived if the deferment is based on WAC 182-12-205 (3)(f).

Note: Enrollment in the PEBB program's MA ((~~or~~)) plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~UMP Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(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 the annual open enrollment. In addition to the annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in PEBB retiree insurance coverage if they:

(a) Do not apply to enroll or defer enrollment within the timelines as described in subsection (5) of this section; or

(b) Do not ((~~maintain continuous enrollment in other qualifying coverage during the deferral period,~~)) meet the requirements to defer enrollment as described in subsection (7)(b)((~~(i)~~)) of this section.

WSR 24-14-124
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2024-01.01—Filed July 2, 2024, 1:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-060.

Title of Rule and Other Identifying Information: **The following sections in chapter 182-08 WAC are being amended:** WAC 182-08-120 Employer contribution for the public employees benefits board (PEBB) benefits, 182-08-185 What are the requirements regarding premium surcharges?, 182-08-191 Subscriber address requirements, and 182-08-235 Employer group and board of directors for school districts and educational service districts application process.

The following sections in chapter 182-12 WAC are being amended: WAC 182-12-111 Which entities and individuals are eligible for public employees benefits board (PEBB) benefits?, 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits?, 182-12-116 Who is eligible to participate in the salary reduction plan?, 182-12-131 How do eligible employees maintain the employer contribution toward public employees benefits board (PEBB) benefits?, 182-12-133 What options for continuation coverage are available to employees and their dependents during certain types of leave or when employment ends due to a layoff?, 182-12-136 May employees on approved educational leave waive continuation coverage?, 182-12-141 If an employee reverts from an eligible position, what happens to their public employees benefits board (PEBB) insurance coverage?, 181-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility?, 182-12-148 What options for continuation coverage are available to employees during their appeal of dismissal?, 182-12-263 National Medical Support Notice (NMSN), and 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-12-260?

The following sections in chapter 182-16 WAC are being amended: WAC 182-16-2010 Appealing a decision regarding public employees benefits board (PEBB) eligibility, enrollment, premium payments, premium surcharges, a wellness incentive, or the administration of benefits, 182-16-2030 Appealing a public employees benefits board (PEBB) program decision regarding eligibility, enrollment, premium payments, premium surcharges, a PEBB wellness incentive, or certain decisions made by an employer group, 182-16-2040 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements?, 182-16-2050 How can an employee appeal a decision regarding the administration of benefits offered under the salary reduction plan?, and 182-16-2060 How can an entity or organization appeal a decision of the health care authority to deny an employer group application?

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend some of the existing rules to support the PEBB program:

1. Implement statutory changes:

- In response to implement SB 5700, section 3, chapter 51, Laws of 2023, amended WAC 182-12-111 to remove employees of the Washington state convention and trade centers and amended WAC 182-16-2050 to update the flexible spending arrangement (FSA) description.

2. Make technical amendments:

- Amended WAC 182-08-120 to include vision insurance.
- Amended WAC 182-08-185 to include an enrollee who elects to continue medical coverage in WAC 182-12-232 must provide an attestation on the required form and clarified a subscriber must provide evidence of the event when there is a change in the spouse's or state registered domestic partner's employer-based group medical.
- Amended WAC 182-08-191 to update who must provide the PEBB program with their correct address and updates to their address if it changes.
- Amended WAC 182-08-235 to remove board of directors for school districts and educational service districts, clarified this section applies to employer groups for the PEBB program, and updated subsection references.
- Amended WAC 182-12-111 to clarify employer groups for the PEBB program, removed board of directors for school districts and educational service districts, added PEBB vision, and updated subsection references.
- Amended WAC 182-12-114 and 182-12-136 to include PEBB vision.
- Amended WAC 182-12-133, 182-12-142, and 182-12-270 to include PEBB vision and added an exception to employees who are not subject to the first premium payment and application premium surcharges.
- Amended WAC 182-12-263 to update who must submit the required forms to the PEBB program, updated subsection references, and clarified when the changes to the health plan coverage or enrollment will begin following the receipt of NMSN.
- Amended WAC 182-16-2010 to clarify PEBB participating employer group and to add PEBB vision.
- Amended WAC 182-16-2030 to clarify PEBB participating employer group and to update a list of applicable appellants regarding when their request for a brief adjudicative proceeding must be received by the PEBB appeals unit.
- Amended WAC 182-16-2040 to update a list of applicable appellants regarding when their request for a brief adjudicative proceeding must be received by the PEBB appeals unit.
- Amended WAC 182-16-2060 to clarify this section applies to an entity or organization whose employer group application is to participate in PEBB insurance coverage.

3. Improve the administration of the PEBB Program:

- Amended WAC 182-12-116 to clarify employees of PEBB participating employer groups.
- Amended WAC 182-12-131 to add a new subsection for clarity.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.065, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024
Wendy Barcus
Rules Coordinator

OTS-5519.1

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-08-120 Employer contribution for the public employees benefits board (PEBB) benefits. The employer contribution must be used to provide public employees benefits board (PEBB) insurance coverage for the basic life insurance benefit, basic accidental death and dismemberment insurance benefit (AD&D), the employer-paid long-term disability (LTD) insurance benefit, medical insurance, dental insurance, vision insurance, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for employees employed by state agencies.

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-08-185 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge in addition to the subscriber's monthly medical premium, when any enrollee, ((~~thirteen~~)) 13 years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee, ((~~thirteen~~)) 13 years and older, enrolled in their public employees benefits board (PEBB) medical engages in tobacco use. The subscriber must attest as described in (a)(i) through (vii) of this subsection:

(i) An employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits must complete the required form to enroll in PEBB medical as described in WAC 182-08-197 (1) or (3). The employee must include their attestation on that form. The employee must submit the form to their employing agency. If the employee's attestation results in a premium surcharge, it will take effect the same date as PEBB medical begins.

(ii) If there is a change in the tobacco use status of any enrollee, ((~~thirteen~~)) 13 years and older on the subscriber's PEBB medical, the subscriber must update their attestation on the required form. An employee must submit the form to their employing agency. Any other subscriber must submit their form to the PEBB program. The attestation change will apply as follows:

• 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) If a subscriber submits the required form to enroll a dependent, ((~~thirteen~~)) 13 years and older, in PEBB medical as described in WAC 182-12-262, the subscriber must attest for their dependent on the required form. An employee must submit the form to their employing agency. Any other subscriber must submit their form to the PEBB program. A change that results in a premium surcharge will take effect the same date as PEBB medical begins.

(iv) An enrollee, ((~~thirteen~~)) 13 years and older, who elects to continue medical coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, ((~~or~~)) 182-12-270, or 182-12-232 must provide an attestation on the required form if they have not previously attested as described in (a) of this subsection. The enrollee must submit their form to the PEBB program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(v) An employee or retiree who enrolls in PEBB medical as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) or (b), 182-12-205 (6) or (7), or 182-12-211, must provide an attestation on the required form if they have not previously attested as described in (a) of this subsection. The employee or retiree must submit their form to the PEBB program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(vi) A surviving spouse, state registered domestic partner, or dependent child, ((~~thirteen~~)) 13 years and older, who enrolls in PEBB medical as described in WAC 182-12-180 (3)(a), 182-12-250(5) or 182-12-265, must provide an attestation on the required form to the

PEBB program if they have not previously attested as described in (a) of this subsection. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(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 their attestation on that form. An employee must submit the form to their employing agency. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

Exceptions: (1) A subscriber enrolled in both medicare Parts A and B and in the medicare risk pool as described in RCW 41.05.080(3) 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 as described in WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the employee 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 (a) of this subsection.

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products. 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 one of the applicable reasonable alternatives offered below:

(i) An enrollee who is ((~~eighteen~~)) 18 years and older and uses tobacco products is currently enrolled in the free tobacco cessation program through their PEBB medical.

(ii) An enrollee who is ((~~thirteen~~)) 13 through ((~~seventeen~~)) 17 years old and uses tobacco products accessed the information and resources aimed at teens on the Washington state department of health's website at https://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 will incur a premium surcharge in addition to the subscriber's monthly medical premium, if an enrolled spouse or state registered domestic partner has chosen not to enroll in another employer-based group medical where the spouse's or state registered domestic partner's share of the medical premium is less than ((~~ninety-five~~)) 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the PEBB Uniform Medical Plan (UMP) Classic and the benefits have an actuarial value of at least ((~~ninety-five~~)) 95 percent of the actuarial value of the PEBB UMP Classic's benefits.

(a) A subscriber who enrolled a spouse or state registered domestic partner under their PEBB medical may only attest during the following times:

(i) When a subscriber becomes eligible to enroll a spouse or state registered domestic partner in PEBB medical as described in WAC 182-12-262. The subscriber must complete the required form to enroll their spouse or state registered domestic partner, and include their attestation on that form. The employee must submit the form to their employing agency. Any other subscriber must submit the form to the PEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as PEBB medical begins;

(ii) During the annual open enrollment. 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 state registered domestic partner's share of the medical premium through their employer-based group medical was more than ((~~ninety-five~~)) 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the PEBB UMP Classic; or

• Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or state registered domestic partner's employer-based group medical was less than ((~~ninety-five~~)) 95 percent of the actuarial value of the PEBB UMP Classic's benefits.

A subscriber must update their attestation on the required form. An employee must submit the form to their employing agency. Any other subscriber must submit the form 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 will take effect January 1st of the following year; and

(iii) When there is a change in the spouse's or state registered domestic partner's employer-based group medical. A subscriber must provide evidence of the event and update their attestation on the required form. An employee must submit the form to their employing agency no later than ((~~sixty~~)) 60 days after the spouse's or state registered domestic partner's employer-based group medical status changes. Any other subscriber must submit the form to the PEBB program no later than ((~~sixty~~)) 60 days after the spouse's or state registered domestic partner's employer-based group medical status 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.

Exceptions:
(1) A subscriber enrolled in both medicare Parts A and B and in the medicare risk pool as described in RCW 41.05.080(3) 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 as described in WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the employee remains in waived status.
(3) An employee who covers their spouse or state registered domestic partner who has waived their own PEBB medical must attest as described in this subsection, but will not incur a premium surcharge if the employee provides an attestation that their spouse or state registered domestic partner is eligible for PEBB medical.
(4) A subscriber who covers their spouse or state registered domestic partner who elected not to enroll in a TRICARE plan must attest as described in this subsection, but will not incur a premium surcharge if the subscriber provides an attestation that their spouse or state registered domestic partner is eligible for a TRICARE plan.

(b) A premium surcharge will be applied to a subscriber who does not attest as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-191 Subscriber address requirements. (1) All employees must provide their employing agency with their correct address and update their address if it changes. ((~~A subscriber on public employees benefits board (PEBB) retiree insurance coverage, or continuation coverage~~)) All other subscribers must provide the PEBB program with their correct address and updates to their address if it changes.

(2) In the event of an appeal, appellants must update their address as required in WAC 182-16-055.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-08-235 Employer group ((~~and board of directors for school districts and educational service districts~~)) application process. This section applies to employer groups for the public employees benefits board (PEBB) program as defined in WAC 182-08-015 ((~~and board members of school districts and educational service districts~~)). An employer group ((~~or board member of a school district or an educational service district~~)) may apply to obtain ((~~public employees benefits board (PEBB)~~)) PEBB insurance coverage through a contract with the health care authority (HCA).

(1) Employer groups with less than 500 employees ((~~and board members of school districts and educational service districts~~)) must apply at least 60 days before the requested coverage effective date. Employer groups with 500 or more employees but with less than 5,000 employees must apply at least 90 days before the requested effective date.

Employer groups with 5,000 or more employees must apply at least 120 days before the requested coverage effective date.

To apply, employer groups must submit the documents and information described in subsection (2) of this section to the PEBB program as follows:

(a) ((~~Board members of school districts and educational service districts are required to provide the documents described in subsection (2)(a) through (c) of this section;~~

~~(b)~~)) Counties, municipalities, political subdivisions, and tribal governments with fewer than 5,000 employees are required to provide the documents and information described in subsection (2)(a) through (f) of this section;

((~~(c)~~)) (b) Counties, municipalities, political subdivisions, and tribal governments with 5,000 or more employees will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section; and

((~~(d)~~)) (c) All employee organizations representing state civil services employees and the Washington health benefit exchange, regardless of the number of employees, will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a)(i) through (iv) of this subsection:

(i) A reference to the group's authorizing statute;

(ii) A description of the organizational structure of the group and a description of the employee bargaining unit or group of nonrepresented employees for which the group is applying;

(iii) Tax identification number; and

(iv) A statement of whether the group is applying to obtain only medical or all available PEBB insurance coverages.

((**Note:** ~~Boards of directors of school districts or educational service districts must provide a statement that the group is agreeing to obtain medical, dental, and life insurance.~~))

(b) A resolution from the group's governing body authorizing the purchase of PEBB insurance coverage.

(c) A signed governmental function attestation document that attests to the fact that employees for whom the group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(d) A member level census file for all of the employees for whom the 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 state registered domestic partner, or child:

(i) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(ii) Age;

(iii) Birth sex;

(iv) First three digits of the member's zip code based on residence;

(v) Indicator of whether the employee is active or retired, if the group is requesting to include retirees; and

(vi) Indicator of whether the member is enrolled in coverage.

(e) Historical claims and cost information that include the following:

(i) Large claims history for 24 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) Summary of historical plan costs; and

(iv) The director or the director's designee may make an exception to the claims and cost information requirements based on the size of the group, except that 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. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim. If historical claims and cost information as described in (e)(i) through (iii) of this subsection are unavailable, the director or the director's designee may make an exception to allow all of the following alternative requirements:

• A letter from their carrier indicating they will not or cannot provide claims data.

• Provide information about the health plan most employees are enrolled in by completing the actuarial calculator authorized by the PEBB program.

• Current premiums for the health plan.

(f) If the application is for a subset of the group's employees (e.g., bargaining unit), the 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 (d) of this subsection. This includes retired employees participating under the group's current health plan. The file must include the same demographic data by member.

(g) Employer groups described in subsection (1)((~~(c)~~)) (b) and ((~~(d)~~)) (c) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the PEBB program. The group must pay for the cost of the evaluation. This cost is nonrefund-

able. A 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 24 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.

Exception: 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. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

OTS-5523.2

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-111 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 as defined in WAC 182-12-109 for the PEBB program may apply to participate in PEBB insurance coverage for groups of employees described in (a)(i) of this subsection and for members of the group's governing authority as described in (a)(i), (ii), and (iii) of this 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) Employer groups must apply through the process described in WAC 182-08-235. Applications from employees of employee organizations representing state civil service employees, the Washington health benefit exchange, and employer groups with 5,000 or more employees are subject to review and approval by the health care authority (HCA)

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) **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) Employees of the Washington health benefit exchange are subject to the same rules as employees of an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(4) **Eligible nonemployees.**

(a) Blind 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.

(i) Eligible blind vendors and their dependents may enroll during the following times:

• When newly eligible: The DSB will notify eligible blind vendors of their eligibility in advance of the date they are eligible for enrollment in PEBB medical.

To enroll, blind vendors must submit the required forms to the DSB. The forms must be received by the DSB no later than 31 days after the blind vendor becomes eligible for PEBB medical;

• 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; or

• 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 60 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.

(ii) Blind vendors who cease to actively operate a facility become ineligible to participate in PEBB medical as described in (a) of this subsection. Enrollees who lose eligibility for coverage may continue enrollment in PEBB medical on a self-pay basis under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage as described in WAC 182-12-146((~~(5)~~)) (6).

(iii) 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 medical ((~~and~~)), dental, and vision while enrolled in that program.

((~~(c) Board members of Washington state school districts and educational service districts eligible to participate under RCW 28A.400.350 may participate in PEBB medical, dental, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, supplemental life insurance, and supplemental AD&D insurance as long as they remain eligible under that section. The board of directors of ed-~~

~~ucational service districts must apply through the process described in WAC 182-08-235 and participate through a contract with the HCA as described in WAC 182-08-245. Dependents of board members are eligible as described in WAC 182-12-260.~~

~~(i) Upon contract with the HCA, eligible board members may individually decide to enroll in PEBB insurance coverage each plan year. If they elect not to enroll, they may only enroll at the following times:~~

~~• During the annual open enrollment; or~~

~~• Following loss of other medical insurance coverage as defined by the Health Insurance Portability and Accountability Act (HIPAA).~~

~~(ii) Board members who no longer hold a position become ineligible to participate in PEBB insurance coverage as described in (c) of this subsection. Enrollees who lose eligibility for coverage may continue enrollment in PEBB medical, PEBB dental, or both on a self-pay basis under COBRA coverage as described in WAC 182-12-146(6).~~

~~(iii) Board members are not eligible for PEBB retiree insurance coverage.~~))

(5) **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)~~)) (f) Any others not expressly defined as an employee.

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies (except governor-declared emergencies) that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Any hours worked in direct response to a governor-declared emergency are not excludable and must be included in determining eligibility. In order to include excluded hours in determining eligibility, employing agencies must request and receive the public employees benefits board (PEBB) program's approval.

For how the employer contribution toward PEBB benefits is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as described in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if they are anticipated to work an average of at least 80 hours per month and are anticipated to work for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, employer-paid long-term disability (LTD) insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(2) **Seasonal employees**, as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if they are anticipated to work an average of at least 80 hours per month and are anticipated to work for at least eight hours in each month of at least three consecutive months of the season.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that they will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours or anticipated du-

ration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least 80 hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, <u>vision,</u> basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

Exception: Seasonal employees who work a recurring, annual season with a duration of less than nine months are not eligible for the employee-paid LTD insurance benefit.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which they are anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria as described in (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward PEBB benefits by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility as described in WAC 182-12-131(3). A faculty becomes eligible through stacking when they meet the requirements as described in (a) of this subsection. When a faculty works for more than one institution of higher education, the faculty must notify their employing agencies that they work at more than one institution and may be eligible through stacking.

(c) **When PEBB benefits begin.**

(i) Medical, dental, vision, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical, dental, vision, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, then coverage begins at the beginning of the second consecutive quarter/semester. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB benefits begin.** Medical, dental, vision, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the

contracted vendor receives the required form or approves the enrollment.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB benefits begin.** Medical, dental, vision, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

WAC 182-12-116 Who is eligible to participate in the salary reduction plan? (1) Employees of state agencies are eligible to participate in the state's salary reduction plan provided they are eligible for public employees benefits board (PEBB) benefits as described in WAC 182-12-114 and they elect to participate within the time frames described in WAC 182-08-197, 182-08-187, or 182-08-199.

(2) Employees of PEBB participating employer groups, as defined in WAC 182-12-109, are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-131 How do eligible employees maintain the employer contribution toward public employees benefits board (PEBB) benefits? The employer contribution toward public employees benefits board (PEBB) benefits begins as described in WAC 182-12-114. This section describes under what circumstances employees maintain eligibility for the employer contribution toward PEBB benefits.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, employees who have established eligibility for benefits as described in 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 as described in 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 PEBB benefits 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 as described in 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, but the eligibility may not exceed a total of ((~~twelve~~)) 12 consecutive calendar months for the combined season and off season.

(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 as described in 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 as described in 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 as described in WAC 182-12-114 (3)(a) and (b)) 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 PEBB benefits.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester PEBB benefits 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 PEBB insurance coverage after the employee was no longer eligible for the employer contribution, PEBB benefits end the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible as described in WAC 182-12-114 (3)(a) and (b)) 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 toward PEBB benefits. "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 their potential eligibility to their 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 as described in WAC 182-12-114 (3)(a) and (b)) 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) or the paid family and medical leave program 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 PEBB benefits as described 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 as described in WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) **The employer contribution toward PEBB benefits 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 subsections (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 PEBB benefits as described in WAC 182-12-114, not including changes in position due to a layoff.

(d) 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 PEBB insurance coverage after the employee was no longer eligible for the employer contribution, PEBB benefits end 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 PEBB benefits, employees have options for providing continuation coverage for themselves and their dependents by self-paying the premium and appli-

cable premium surcharges set by the health care authority (HCA). These options are available as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

WAC 182-12-133 What options for continuation coverage are available to employees and their dependents during certain types of leave or when employment ends due to a layoff? Employees who have established eligibility for public employees benefits board (PEBB) benefits as described in WAC 182-12-114 may continue coverage for themselves and their dependents during certain types of leave or when their employment ends due to a layoff.

(1) Employees who are no longer eligible for the employer contribution toward PEBB benefits due to an event described in (b)(i) through (vi) of this subsection may continue coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA) from the date eligibility for the employer contribution is lost:

(a) Employees may continue any combination of medical ((~~or~~)), dental, or vision and may also continue life insurance and accidental death and dismemberment (AD&D) insurance. If life insurance or AD&D insurance is elected, both basic life and basic AD&D insurance must be continued. Employees who continue basic life insurance and basic AD&D insurance may also continue supplemental life and AD&D insurance. 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 employer-paid long-term disability (LTD) insurance or both employer-paid and employee-paid LTD insurance.

(b) Employees in the following circumstances who lose their eligibility for the employer contribution toward PEBB benefits qualify to continue coverage under this subsection:

(i) Employees who are on authorized leave without pay;

(ii) Employees who are on approved educational leave;

(iii) Employees who are receiving time-loss benefits under workers' compensation;

(iv) Employees who are called to active duty in the uniformed services as defined under USERRA;

(v) Employees whose employment ends due to a layoff as defined in WAC 182-12-109; and

(vi) Employees who are applying for disability retirement.

(c) The employee's election must be received by the PEBB program no later than ((~~sixty~~)) 60 days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(d) Employees may self-pay for a maximum of ((~~twenty-nine~~)) 29 months. The employee's first premium payment and applicable premium surcharges are due no later than ((~~forty-five~~)) 45 days after the election period ends as described in (c) of this subsection, except as described in WAC 182-08-180 (1)(a).

Premiums and applicable premium surcharges associated with continuing PEBB medical, must be made to the HCA as well as premiums associated with continuing PEBB dental, PEBB vision, or LTD insurance

coverage. Premiums associated with continuing life insurance and AD&D insurance coverage must be made to the contracted vendor. Following the employee's first premium payment, the employee must pay the premium amounts for PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(e) If the employee's monthly premium or applicable premium surcharges remain unpaid for ((~~sixty~~)) 60 days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c).

(2) The number of months that employees self-pay the premium while eligible 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). Employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who have not used the maximum number of months allowed under COBRA coverage may continue medical, dental, vision, or ((~~both~~)) any combination of these benefits for the remaining difference in months by self-paying the premium and applicable premium surcharges as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-136 May employees on approved educational leave waive continuation coverage? In order to avoid duplication of group health plan coverage, the following shall apply to employees during any period of approved educational leave. Employees eligible for continuation coverage provided in WAC 182-12-133 who obtain other employer-based group medical ((~~or~~)), dental, vision, or ((~~both~~)) any combination of these benefits, may waive continuation of such coverage for each full calendar month in which they maintain coverage under the other employer-based medical ((~~or~~)), dental, or vision. These employees have the right to reenroll in a public employees benefits board (PEBB) health plan effective the first day of the month after the date the other employer-based group medical ((~~or~~)), dental, or vision ends, provided evidence of such other coverage is provided to the PEBB program upon application for reenrollment.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-141 If an employee reverts from an eligible position, what happens to their public employees benefits board (PEBB) insurance coverage? (1) If an employee reverts for reasons other than a layoff and is not eligible for the employer contribution toward public employees benefits board (PEBB) benefits under this chapter, they may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharge set by the health care authority (HCA) for up to ((~~eighteen~~)) 18 months under the same terms as an employee who is granted leave without pay under WAC 182-12-133(1):

(a) The employee's election must be received by the PEBB program no later than ((~~sixty~~)) 60 days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(b) The employee's first premium payment and applicable premium surcharges are due to the HCA no later than ((~~forty-five~~)) 45 days after the election period ends as described in (a) of this subsection, except as described in WAC 182-08-180 (1)(a). Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental and PEBB vision. Premiums associated with continuing life insurance and accidental death and dismemberment insurance coverage must be made to the contracted vendor;

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(d) If the employee's monthly premium or applicable premium surcharges remain unpaid for ((~~sixty~~)) 60 days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c).

(2) If an employee is reverted due to a layoff, the employee may be eligible for the employer contribution toward PEBB benefits under the criteria of WAC 182-12-129. If determined not to be eligible under WAC 182-12-129, the employee may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharges set by the HCA under WAC 182-12-133.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility? (1) **Faculty** may continue any combination of medical ((~~or~~)), dental, or vision, and may also continue life insurance and accidental death and dismemberment (AD&D) insurance by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the employer, for a maximum of ((~~twelve~~)) 12 months between periods of eligibility. If life insurance or AD&D insurance is elected, both basic life and basic AD&D insurance must be continued. Employees who continue basic life insurance and basic AD&D insurance may also continue supplemental life and AD&D insurance:

(a) The employee's election must be received by the public employees benefits board (PEBB) program no later than ((~~sixty~~)) 60 days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(b) The employee's first premium payment and applicable premium surcharges are due to the HCA no later than ((~~forty-five~~)) 45 days after the election period ends as described in (a) of this subsection, except as described in WAC 182-08-180 (1)(a). Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB

dental and PEBB vision. Premiums associated with continuing life insurance and AD&D insurance coverage must be made to the contracted vendor;

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(d) If the employee's monthly premium or applicable premium surcharges remain unpaid for ((~~sixty~~)) 60 days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c).

(2) **Benefits-eligible seasonal employees** may continue any combination of medical ((~~or~~)), dental, or vision, and may also continue life insurance and AD&D insurance by self-paying the premium and applicable premium surcharges set by the HCA, with no contribution from the employer, for a maximum of ((~~twelve~~)) 12 months between periods of eligibility. If life insurance or AD&D insurance is elected, both basic life and basic AD&D insurance must be continued. Employees who continue basic life insurance and basic AD&D insurance may also continue supplemental life and AD&D insurance:

(a) The employee's election must be received by the PEBB program no later than ((~~sixty~~)) 60 days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(b) The employee's first premium payment and applicable premium surcharges are due to the HCA no later than ((~~forty-five~~)) 45 days after the election period ends as described in (a) of this subsection, except as described in WAC 182-08-180 (1)(a). Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental and PEBB vision. Premiums associated with continuing life insurance and AD&D insurance coverage must be made to the contracted vendor;

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(d) If the employee's monthly premium or applicable premium surcharges remain unpaid for ((~~sixty~~)) 60 days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c).

(3) **COBRA.** An employee who is no longer eligible for continuation coverage as described in subsections (1) and (2) of this section, but who has not used the maximum number of months allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), may continue medical, dental, vision, or ((~~both~~)) any combination of these benefits for the remaining difference in months by self-paying the premium and applicable premium surcharges set by the HCA under COBRA as described in WAC 182-12-146. The number of months that a faculty or seasonal employee self-pays premiums under the criteria in subsection (1) or (2) of this section will count toward the total months of continuation coverage allowed under COBRA.

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

WAC 182-12-148 What options for continuation coverage are available to employees during their appeal of dismissal? (1) Employees awaiting the hearing outcome of a dismissal action before any of the following may continue their public employees benefits board (PEBB) insurance coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the employer, on the same terms as an employee who is granted leave as described in WAC 182-12-133:

(a) The personnel resources board;

(b) An arbitrator;

(c) A grievance or appeals committee established under a collective bargaining agreement for union represented employees; or

(d) A court.

(2) The employee must pay premium amounts and applicable premium surcharges associated with PEBB insurance coverage as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharges remain unpaid for ((~~sixty~~)) 60 days from the original due date, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c).

(3) If the dismissal is upheld, all PEBB insurance coverage will terminate at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is later, with the exception described in subsection (4) of this section.

(4) If the dismissal is upheld and the employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may continue any combination of PEBB medical, dental, or ((~~both~~)) vision for the remaining months available under COBRA. See WAC 182-12-146 for information on COBRA. The number of months the employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(5) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid PEBB insurance coverage retroactively, the employing agency must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

(a) When the employer contribution is reinstated, the HCA will refund to the employee any premiums and applicable premium surcharges the employee paid. In the alternative, at the request of the employee, HCA may deduct the employee's contribution amount for PEBB benefits from the refund of premiums and applicable premium surcharges self-paid by the employee during the appeal period.

(b) All supplemental life, supplemental accidental death and dismemberment, and employee-paid LTD insurance which was in force at the time of dismissal shall be reinstated retroactively only if the employee makes retroactive payment of premium for any such supplemental coverage and employee-paid LTD insurance which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to enroll in such supplemental coverage and employee-paid LTD insurance.

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-12-263 National Medical Support Notice (NMSN). (1) When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(a) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under subsection (c) of this section. Employees submit the required forms to their employing agency. All other subscribers ((~~on continuation coverage or PEBB retiree insurance coverage~~)) submit the required forms to the public employees benefits board (PEBB) program.

(b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to (c) of this subsection upon request of:

(i) The child's other parent; or

(ii) Child support enforcement program.

(c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

(i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

(ii) An employee who has waived PEBB medical under WAC 182-12-128 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

(iii) The subscriber's selected health plan will be changed if directed by the NMSN;

(iv) 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;

(v) If the dependent is enrolled in both school employees benefits board medical and PEBB medical as a dependent as described in WAC 182-12-123 (6)((~~(g)~~)) (f) and there is a NMSN in place, enrollment will be in accordance with the NMSN; or

(vi) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(d) Changes to health plan coverage or enrollment as described in (c)(i) through (iii) of this subsection will begin the first day of the month following receipt by the employing agency or the PEBB program of the NMSN. If the NMSN is received ((~~by the employing agency~~)) 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 (c)(iv) of this subsection the last day of the month the NMSN 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.

(2) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided, the dependent may be removed from the subscriber's PEBB health plan coverage prospectively.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-12-260? If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the premiums and applicable premium surcharges set by the health care authority (HCA), with no contribution from the employer, following their loss of eligibility under the subscriber's health plan coverage. The dependent's first premium payment and applicable premium surcharges are due no later than ((~~forty-five~~)) 45 days after the election period ends as described in WAC 182-12-146, 182-12-180, 182-12-250, or 182-12-265, whichever applies, except as described in WAC 182-08-180 (1)(a). Premiums and applicable premium surcharges associated with continuing PEBB medical, must be made to the HCA as well as premiums associated with continuing PEBB dental and PEBB vision insurance coverages. Following the dependent's first premium payment, the dependent must pay premium and applicable premium surcharges as they become due. If the monthly premium or applicable premium surcharges remain unpaid for ((~~sixty~~)) 60 days from the original due date, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c). The PEBB program must receive the required forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, state registered domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment as described in WAC 182-12-180, 182-12-250, or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria as described in WAC 182-12-260 are eligible to continue PEBB medical, dental, vision, or ((~~both~~)) any combination of these coverages under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-12-146 for more information on COBRA.

(3) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue PEBB medical, dental, vision, or ((~~both~~)) any combination of these coverages on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(4) No continuation coverage will be offered unless the PEBB program is notified through hand-delivery or United States Postal Service mail of the qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

OTS-5433.2

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2010 Appealing a decision regarding public employees benefits board (PEBB) eligibility, enrollment, premium payments, premium surcharges, a wellness incentive, or the administration of benefits. (1) Any current or former employee of a state agency or their dependent aggrieved by a decision made by the state agency with regard to public employees benefits board (PEBB) eligibility, enrollment, or premium surcharges may appeal that decision to the state agency by the process described in WAC 182-16-2020.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to PEBB benefits, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any current or former employee of ((~~an~~)) a PEBB participating employer group or their dependent who is aggrieved by a decision made by ((~~an~~)) the employer group with regard to PEBB eligibility, enrollment, or premium surcharges may appeal that decision to the employer group through the process established by the employer group.

Exception: Any current or former employee of ((~~an~~)) a PEBB participating employer group aggrieved by a decision regarding life insurance, long-term disability (LTD) insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may appeal that decision to the PEBB appeals unit by the process described in WAC 182-16-2030.

(3) Any subscriber or dependent aggrieved by a decision made by the PEBB program with regard to PEBB eligibility, enrollment, premium payments, premium surcharges, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive, may appeal that decision to the PEBB appeals unit by the process described in WAC 182-16-2030.

(4) Any enrollee aggrieved by a decision regarding the administration of PEBB medical ((~~and~~)), dental, vision, life insurance, accidental death and dismemberment (AD&D) insurance, or long-term disability insurance may appeal that decision by following the appeal provisions of those plans, with the exception of:

(a) Enrollment decisions;

(b) Premium payment decisions other than life insurance or AD&D insurance premium payment decisions; and

(c) Eligibility decisions.

(5) Any PEBB enrollee aggrieved by a decision regarding the administration of PEBB long-term care insurance or property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(6) Any PEBB employee aggrieved by a decision regarding the administration of a benefit offered under the salary reduction plan may appeal that decision by the process described in WAC 182-16-2050.

(7) Any subscriber aggrieved by a decision made by the PEBB wellness incentive program contracted vendor regarding the completion of the PEBB wellness incentive program requirements, or a request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision by the process described in WAC 182-16-2040.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2030 Appealing a public employees benefits board (PEBB) program decision regarding eligibility, enrollment, premium

payments, premium surcharges, a PEBB wellness incentive, or certain decisions made by an employer group. (1) A decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, premium payments, premium surcharges, or a PEBB wellness incentive, may be appealed by submitting a request to the PEBB appeals unit for a brief adjudicative proceeding to be conducted by the authority.

(2) A decision made by ((~~an~~)) a PEBB participating employer group regarding life insurance, LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive, may be appealed by submitting a request to the PEBB appeals unit for a brief adjudicative proceeding to be conducted by the authority.

(3) The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(4) The request for a brief adjudicative proceeding from a current or former employee or employee's dependent must be received by the PEBB appeals unit no later than ((~~thirty~~)) 30 days after the date of the denial notice.

(5) The request for a brief adjudicative proceeding from a retiree, ((~~self-pay~~)) a continuation coverage enrollee, a retired employee or retired school employee continuing PEBB health plan coverage when their employer group ceases participation, a survivor, or their dependent ((~~of a retiree or self-pay enrollee~~)) must be received by the PEBB appeals unit no later than ((~~sixty~~)) 60 days after the date of the denial notice.

(6) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(7) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(8) Failing to timely request a brief adjudicative proceeding will result in the prior PEBB program decision becoming the authority's final order without further action.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2040 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements? (1) Any subscriber aggrieved by a decision regarding the completion of the wellness incentive program requirements, or request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision to the public employees benefits board (PEBB) wellness incentive program contracted vendor.

(2) Any subscriber who disagrees with a decision in response to an appeal filed with the PEBB wellness incentive program contracted vendor may appeal the decision by submitting a request for a brief adjudicative proceeding to the PEBB appeals unit.

(a) The request for a brief adjudicative proceeding from a current or former employee must be received by the PEBB appeals unit no later than ((~~thirty~~)) 30 days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(b) The request for a brief adjudicative proceeding from a retiree, a continuation coverage enrollee, a retired employee or retired school employee continuing PEBB health plan coverage when their employer group ceases participation, or ((~~self-pay subscriber~~)) a survivor must be received by the PEBB appeals unit no later than ((~~sixty~~)) 60 days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(3) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(4) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(5) If a subscriber fails to timely request a brief adjudicative proceeding, the decision of the PEBB wellness incentive program contracted vendor becomes the authority's final order without further action.

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-16-2050 How can an employee appeal a decision regarding the administration of benefits offered under the salary reduction plan? (1) Any employee who disagrees with a decision that denies eligibility for, or enrollment in, a benefit offered under the salary reduction plan may appeal that decision by submitting a written request for administrative review to their state agency. The state agency must receive the written request for administrative review no later than 30 days after the date of the denial. The contents of the written request for administrative review are to be provided as described in WAC 182-16-2070.

(a) Upon receiving the written request for administrative review, the state agency must perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The state agency must render a written decision within 30 days of receiving the written request for administrative review. The written decision must be sent to the employee who submitted the written request for review and must include a description of appeal rights. The state agency must also send a copy of the state agency's written decision to the state agency's administrator (or designee) and to the PEBB appeals unit. If a state agency fails to render a written decision within 30 days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the 31st day and the original underlying state agency decision may be appealed to the PEBB appeals unit by following the process in this section.

(2) Any employee who disagrees with the state agency's decision in response to a written request for administrative review, as described in this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the PEBB appeals unit.

(a) The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date of the state agency's written decision on the request for administrative re-

view. If a state agency fails to render a written decision within 30 days of receiving a written request for administrative review, the PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date the request for administrative review was deemed denied. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the PEBB appeals unit receives a request for a brief adjudicative proceeding, the PEBB appeals unit will send a request for documentation and information to the applicable state agency. The state agency will then have two business days to respond to the request and provide the documentation and information requested. The state agency will also send a copy of the documentation and information to the employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If an employee fails to timely request a brief adjudicative proceeding, the state agency's prior written decision becomes the authority's final order without further action.

(3) Any employee aggrieved by a decision regarding a claim for benefits under the ((~~medical~~)) flexible spending arrangement or limited purpose flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the authority's contracted vendor by following the appeal process of that contracted vendor.

(a) Any employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the ((~~medical~~)) FSA, limited purpose FSA, and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the PEBB appeals unit. The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date of the contracted vendor's appeal decision. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If an employee fails to timely request a brief adjudicative proceeding, the contracted vendor's prior written decision becomes the authority's final order without further action.

(4) Any employee aggrieved by a decision regarding the administration of the premium payment plan offered under the salary reduction plan may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the PEBB appeals unit for a brief adjudicative proceeding.

(a) The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date of the denial notice by the PEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must notify the appellant in writing when the notice of appeal has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If an employee fails to timely request a brief adjudicative proceeding, the PEBB program's prior written decision becomes the authority's final order without further action.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2060 How can an entity or organization appeal a decision of the health care authority to deny an employer group application? (1) An entity or organization whose employer group application to participate in public employees benefits board (PEBB) insurance coverage is denied by the authority may appeal the decision by submitting a request for a brief adjudicative proceeding to the ((~~public employees benefits board (~~))PEBB((~~)~~)) appeals unit. For rules regarding eligible entities, see WAC 182-12-111.

(2) The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than ((~~thirty~~)) 30 days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(3) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(4) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(5) Failing to timely request a brief adjudicative proceeding will result in the prior PEBB program decision becoming the authority's final order without further action.

WSR 24-14-125
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2024-01.02—Filed July 2, 2024, 1:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-060.

Title of Rule and Other Identifying Information: The following sections are being amended: WAC 182-08-015 Definitions, 182-12-109 Definitions, and 182-16-020 Definitions.

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend rules to support the public employees benefits board (PEBB) program:

1. Implement statutory changes:

In response to SHB 1804, section 1, chapter 312, Laws of 2023, the following definitions are amended:

- Amended the definition of "PEBB Program" to include statutory reference in WAC 182-08-015, 182-12-109, and 182-16-020.
- Amended the definition of "subscriber" to include retired employee or retired school employee continuing health plan coverage when their employer group ceases participation with the authority and clarified PEBB participating employer group in WAC 182-08-015, 182-12-109, and 182-16-020.

In response to SSB 5275, section 2, chapter 13, Laws of 2023, the following definitions are amended:

- Amended the definition of "employer group" to include an employer group obtaining school employees benefits through the school employees benefits board (SEBB) program and clarified the employer group for the PEBB program by adding a statutory reference in WAC 182-08-015, 182-12-109, and 182-16-020.
- Amended the definition of "employer-paid coverage" to include an employer group obtaining school employees benefits through the SEBB program in WAC 182-12-109.
- Created the definitions of "school employee" and "SEBB" in WAC 182-08-015.
- Created the definition of "school employee" in WAC 182-16-020.
- Amended the definition of "school employee" to include represented employees of Educational Service Districts, and include

school employees of employee organizations representing school employees and employees of a tribal school in WAC 182-12-109.

In response to SB 5700, section 3, chapter 51, Laws of 2023, the following definitions are amended:

- Amended the definition of "employee" to remove employees of the Washington state convention and trade center in WAC 182-08-015, 182-12-109, and 182-16-020.
- Amended the definitions of "flexible spending arrangement" or "FSA" and "salary reduction plan" in WAC 182-08-015, 182-12-109, and 182-16-020.
- Amended the definitions of "annual open enrollment"; updated "flexible spending arrangement" in WAC 182-12-109.
- Amended the definition of "special open enrollment" in WAC 182-08-015 and 182-12-109.

2. Make technical amendments:

- Amended the definition of "employee" and removed language related to Washington state Educational Service District in WAC 182-08-015, 182-12-109, and 182-16-020.
- Amended the definitions of "health plan" and "waive" to include vision or any combination of medical, dental, or vision coverages in WAC 182-08-015, 182-12-109, and 182-16-020.
- Amended the definition of "employer-based group health plan" to include vision or any combination of medical, dental, or vision coverages in WAC 182-08-015 and 182-12-109.
- Amended the definition of "employer contribution" to clarify PEBB participating employer group in WAC 182-12-109.
- Removed the definition of "employer-paid coverage" in WAC 182-08-015.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.011, 41.05.021, and 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023; SSB 5275, section 2, chapter 13, Laws of 2023; and SB 5700, section 3, chapter 51, Laws of 2023.

Statute Being Implemented: RCW 41.05.021, 41.05.065, and 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023; SSB 5275, section 2, chapter 13, Laws of 2023; and SB 5700, section 3, chapter 51, Laws of 2023.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024
Wendy Barcus
Rules Coordinator

OTS-5518.2

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"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 by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), the ((~~medical~~)) flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"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 state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of PEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or the public employees benefits board's policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"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 PEBB insurance coverage by a retiree or an 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 employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program 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 submits application materials to 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; (c) through December 31, 2019, employees of a school district ((~~or represented employees of an educational service district~~)) if the authority agrees to provide any of the school districts' ((~~or educational service 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) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW((~~; and (g) through December 31, 2023, nonrepresented employees of an educational service district~~)). "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 RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group health plan" means group medical ((~~and~~)), group dental, and group vision related to a current employment relationship. It does not include medical ((~~or~~)), dental, or vision coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or PEBB participating employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means:

• For the public employees benefits board as defined in RCW 41.05.011 (9)(a), those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, and employee organizations representing state civil service employees, ((~~and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts~~)) obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

• For the school employees benefits board as defined in RCW 41.05.011 (9)(b), an employee organization representing school employees and a tribal school as defined in RCW 28A.715.010, obtaining school employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the school employees benefits board as described in WAC 182-30-215.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

((~~"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible under WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.~~))

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and 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.

"Flexible spending arrangement" or "FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical ((~~or~~)), dental, vision, or ((~~both~~)) any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of $50 or 10 percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"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.

"Large claim" means a claim for more than $25,000 in allowed costs for services in a quarter.

"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" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

((~~"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.~~))

"Ongoing large claim" means 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 $25,000 in the quarter.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011 or as described in RCW 41.05.080 (1)(a)(ii).

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

• The spouse's or state registered domestic partner's share of the medical premium is less than 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

• The benefits have an actuarial value of at least 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, ((~~medical~~)) flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means all employees of school districts and charter schools established under chapter 28A.710 RCW; represented employees of educational service districts; effective January 1, 2024, all employees of educational service districts; and effective January 1, 2024, pursuant to a contractual agreement with the authority, "school employee" may also include: (a) employees of employee organizations representing school employees, at the option of each such employee organization; and (b) employees of a tribal school as defined in RCW 28A.715.010, if the governing body of the tribal school seeks and receives the approval of the authority to provide any of its insurance programs by contracts with the authority, as provided in RCW 41.05.021 (1)(f) and (g).

"SEBB" means the school employees benefits board.

"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. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, ((~~medical~~)) FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related 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. 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.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, retired employee or retired school employee continuing health plan coverage when their employer group ceases participation with the authority, or survivor who has been determined eligible by the PEBB program, PEBB participating employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the employee in addition to the coverage provided by the employing agency.

"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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"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 an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128. An employee on approved educational leave who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental and PEBB vision.

OTS-5522.1

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"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 by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), the ((~~medical~~)) flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state 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 state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of PEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or the public employees benefits board's policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"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 PEBB insurance coverage by a retiree or an 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 employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, 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" for the public employees benefits board program 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 submits application materials to 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; (c) through December 31, 2019, employees of a school district ((~~or represented employees of an educational service district~~)) if the authority agrees to provide any of the school districts' ((~~or educational service 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) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW((~~; and (g) through December 31, 2023, nonrepresented employees of an educational service district~~)). "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 RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical ((~~and~~)), group dental, and group vision related to a current employment relationship. It does not include medical ((~~or~~)), dental, or vision coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or PEBB participating employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means:

• For the public employees benefits board as defined in RCW 41.05.011 (9)(a), those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, and employee organizations representing state civil service employees((~~, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts~~)) obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

• For the school employees benefits board as defined in RCW 41.05.011 (9)(b), an employee organization representing school employees and a tribal school as defined in RCW 28A.715.010, obtaining school employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the school employees benefits board as described in WAC 182-30-215.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or ((~~an~~)) a PEBB participating employer group for employees eligible in WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization or a SEBB participating employer group, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and 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 medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE plans which are not employer-based group medical.

"Flexible spending arrangement" or "FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical ((~~or~~)), dental, vision, or ((~~both~~)) any combination of these coverages, developed by the 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.

"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" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

((~~"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.~~))

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011 or as described in RCW 41.05.080 (1)(a)(ii).

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

• The spouse's or state registered domestic partner's share of the medical premium is less than 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

• The benefits have an actuarial value of at least 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, ((~~medical~~)) flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means all employees of school districts and charter schools established under chapter 28A.710 RCW; ((~~and~~)) represented employees of educational service districts; effective January 1, 2024, all employees of educational service districts; and effective January 1, 2024, pursuant to a contractual agreement with the authority, "school employee" may also include: (a) Employees of employee organizations representing school employees, at the option of each such employee organization; and (b) employees of a tribal school as defined in RCW 28A.715.010, if the governing body of the tribal school seeks and receives the approval of the authority to provide any of its insurance programs by contracts with the authority, as provided in RCW 41.05.021 (1)(f) and (g).

"SEBB" means the school employees benefits board.

"SEBB insurance coverage" means any medical, dental, vision, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"Season" means any recurring annual period of work at a specific time of year that lasts three to 11 consecutive months.

"Seasonal employee" means a state 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. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, ((~~medical~~)) FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related 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. 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.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, retired employee or retired school employee continuing health plan coverage when their employer group ceases participation with the authority, or survivor who has been determined eligible by the PEBB program, PEBB participating employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the employee in addition to the coverage provided by the employing agency.

"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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"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 an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128. An employee on approved educational leave who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB med-

ical to enroll in SEBB medical also waives enrollment in PEBB dental and PEBB vision.

OTS-5527.1

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-16-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Appellant" means a person who requests a brief adjudicative proceeding with the PEBB appeals unit about the action of the employing agency, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-16-2000 through 182-16-2160.

"Business days" means all days except Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, an employing agency, contracted vendor, or the PEBB program that aggrieves a subscriber, a dependent, or an applicant, 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 employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction

plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Dispositive motion" means a motion made to a presiding officer, reviewing officer, or hearing officer to decide a claim or case in favor of the moving party without further proceedings.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program 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 submits application materials to 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; (c) through December 31, 2019, employees of a school district ((~~or represented employees of an educational service district~~)) if the authority agrees to provide any of the school districts' ((~~or educational service 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) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW((~~; and (g) through December 31, 2023, nonrepresented employees of an educational service district~~)). "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 RCW 41.05.011 or by the authority under this chapter.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means:

• For the public employees benefits board as defined in RCW 41.05.011 (9)(a), those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, and employee organizations representing state civil service employees((~~, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts~~)) obtain-

ing employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

• For the school employees benefits board as defined in RCW 41.05.011 (9)(b), an employee organization representing school employees and a tribal school as defined in RCW 28A.715.010, obtaining school employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the school employees benefits board as described in WAC 182-30-215.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and 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.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, reviewing officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

• Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;

• First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority
Attn: PEBB Appeals Unit
P.O. Box 45504
Olympia, WA 98504-5504;

• Fax: 360-763-4709; or

• Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"Final order" means an order that is the final health care authority decision.

"Flexible spending arrangement" or "FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.476 and WAC 182-16-3000 through 182-16-3200.

"HCA hearing representative" means a person who is authorized to represent the PEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical ((~~or~~)), dental, vision, or ((~~both~~)) any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

• A director-designated HCA employee; or

• When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"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.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

((~~"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.~~))

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011 or as described in RCW 41.05.080 (1)(a)(ii).

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state

registered domestic partner choosing not to enroll in their employer-based group medical when:

• The spouse's or state registered domestic partner's share of the medical premiums is less than 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

• The benefits have an actuarial value of at least 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Public employee" has the same meaning as employee.

"Reviewing officer or officers" means one or more delegates from the director that consider appeals relating to the administration of PEBB benefits by the PEBB program.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, ((~~medical~~)) flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means all employees of school districts and charter schools established under chapter 28A.710 RCW; represented employees of educational service districts; effective January 1, 2024, all employees of educational service districts; and effective January 1, 2024, pursuant to a contractual agreement with the authority, "school employee" may also include: (a) Employees of employee organizations representing school employees, at the option of each such employee organization; and (b) Employees of a tribal school as defined in RCW 28A.715.010, if the governing body of the tribal school seeks and receives the approval of the authority to provide any of its insurance programs by contracts with the authority, as provided in RCW 41.05.021 (1)(f) and (g).

"Service" or "serve" means the process described in WAC 182-16-058.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. 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.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, retired employee or retired school employee continuing health plan coverage when their employer group ceases participation with the authority, or survivor who has been determined eligible by the PEBB program, PEBB participating employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"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, pipe tobacco, chewing tobacco,

snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"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.

WSR 24-14-128
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2024-01.03—Filed July 2, 2024, 2:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-060.

Title of Rule and Other Identifying Information: The following section is being amended: WAC 182-08-180 Premium payments and premium refunds.

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC 182-08-180 to support the public employees benefits board (PEBB) program:

1. Implement statutory changes:

- In response to SHB 1804, section 1, chapter 312, Laws of 2023, HCA implemented to include language that addresses a retired employee, a retired school employee, or a survivor electing to enroll in PEBB health plan coverage when their employer group ceases participation.
- In response to HB 2481, section 1, chapter 185, Laws of 2024, HCA implemented to include language that addresses when premiums and applicable premium surcharges are waived for a retiree who dies.

2. Make technical amendments:

- Included PEBB vision premiums and applicable premium surcharges be made to HCA.
- Included uniform medical plan classic medicare plan to address medicare Part D late enrollment penalty.
- Created exceptions to include subscribers who are electing PEBB retiree insurance coverage but not required to make the first premium payment and applicable premium surcharges to begin enrollment.
- Updated WAC references.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.065, 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023; HB 2481, section 1, chapter 185, Laws of 2024.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023; HB 2481, section 1, chapter 185, Laws of 2024.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024
Wendy Barcus
Rules Coordinator

OTS-5520.1

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-08-180 Premium payments and premium refunds. Public employees benefits board (PEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (4) or (5).

(1) **Premium payments.** PEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which PEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of PEBB insurance coverage and will not be prorated during any month, except as described in (e) of this subsection.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) or (b), 182-12-205 (6) or (7), 182-12-211, and 182-12-265 (1), (2)(d), and (3); or electing to enroll in continuation coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270; or a retired employee, a retired school employee, or a

survivor electing to enroll in PEBB health plan coverage when their employer group ceases participation as described in WAC 182-12-232, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than 45 days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental, PEBB vision, or long-term disability (LTD) insurance coverage. Any medicare part D late enrollment penalty associated with the medicare advantage-prescription drug plan or Uniform Medical Plan Classic medicare plan must be made to the contracted vendor. Premiums associated with life insurance and accidental death and dismemberment (AD&D) insurance coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

Exceptions:

(1) A subscriber electing to enroll in PEBB retiree insurance coverage who elects to pay premiums by deducting from their Washington state department of retirement systems pension retirement benefit is not required to make the first premium payment and applicable premium surcharges to begin enrollment. If there is a delay in the deduction from the pension when the subscriber first enrolls, HCA will send an invoice to the subscriber for the first premium payment and applicable premium surcharges.

(2) A subscriber enrolled in continuation coverage as defined in WAC 182-08-015 or 182-30-020 who is electing to enroll in PEBB retiree insurance coverage, or a subscriber enrolled in continuation coverage as defined in WAC 182-08-015 who is electing to enroll in another type of continuation coverage is not required to make the first premium payment and applicable premium surcharges to begin the new enrollment.

(b) For employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the employing agency or contracted vendor. If an employee elects supplemental coverage or employee-paid LTD insurance, or is enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(a) or (3)(a), or is enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(b), the employee is responsible for payment of premiums from the month that the supplemental coverage or employee-paid LTD insurance begins.

Exception: An employee who is on a leave of absence and maintains eligibility for the employer contribution, will have their premiums waived for their employee-paid LTD insurance for the first 90 days. For this purpose, "leave of absence" is defined as a paid or unpaid temporary or indefinite administrative leave, involuntary leave, sick leave, or insurance continued under the federal Family and Medical Leave Act, or paid family and medical leave program as described in WAC 182-12-138.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the employing agency, subscriber, or a subscriber's legal representative to the HCA or contacted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for 30 days will be considered delinquent. A subscriber is allowed a grace period of 30 days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber's monthly premiums or applicable premium surcharges remain unpaid for 60 days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan of up to 12 months in duration with the subscriber or the subscriber's legal representative upon request.

Exception: For a subscriber enrolled in a medicare advantage ((~~or~~)) plan, a medicare advantage-prescription drug plan, or the Uniform Medical Plan Classic medicare plan a notice will be sent to them notifying them that they are delinquent on their monthly premiums and that the enrollment will be terminated prospectively to the end of the month after the notice is sent.

(d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA or contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for 30 days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for 30 days past the date the monthly premiums or applicable premium surcharges were due.

(e) When an enrolled retiree dies on or after June 6, 2024, the premium payments for PEBB medical, PEBB dental, PEBB vision, and any applicable premium surcharges for the retiree will be waived by HCA for the month in which the death occurred. Subscribers enrolled as described in WAC 182-12-265 (2)(c) will be responsible for their continued payment of premiums and applicable premium surcharges as described in this section.

(2) **Premium refunds.** PEBB insurance coverage premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the employing agency any excess premiums and applicable premium surcharges paid during the 60-day adjustment period, except as indicated in WAC 182-12-148(5).

(b) When premiums and applicable premium surcharges are waived for a retiree who dies as described in subsection (1)(e) of this section, HCA will refund any excess premiums and applicable premium surcharges paid to the retiree's estate, to the department of retirement systems, or apply any excess premiums to the surviving dependent's account.

(c) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within 60 days after the event that created a change of premiums, the PEBB director, the PEBB director's designee, or the PEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges which does not exceed 12 months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

((~~(c)~~)) (d) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time they were enrolled under the federal program if approved by the PEBB director or the PEBB director's designee.

((~~(d)~~)) (e) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employing agency, subscriber, or beneficiary.

((~~(e)~~)) (f) Employing agency errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employee or beneficiary as described in WAC 182-08-187 (4) and (5).

WSR 24-14-130
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2024-01.04—Filed July 2, 2024, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-060.

Title of Rule and Other Identifying Information: The following sections are being amended: WAC 182-12-171 When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? and 182-12-211 May an employee or a school employee who is determined to be retroactively eligible for disability retirement enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance?

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend rules to support the PEBB program:

1. Amended WAC 182-12-171 and 182-12-211 to implement statutory changes:

- In response to HB 1008, section 1, chapter 164, Laws of 2023, HCA amended WAC 182-12-171 and 182-12-211 to include separated employees and clarified the requirement for a retiring employee who is a member of Plan 3 retirement system.
- In response to SHB 1804, section 1, chapter 312, Laws of 2023, HCA amended WAC 182-12-171 to update WAC references.
- In response to SB [SSB] 5275, section 5, chapter 13, Laws of 2023, HCA amended WAC 182-12-171 and 182-12-211 to add eligibility requirements for retiring school employees of a SEBB participating employer group.

2. Amended WAC 182-12-171 and 182-12-211 to implement the following PEBB policy resolutions:

- PEBB 2024-14 Non-medicare retiree enrollment requirement.
- PEBB 2024-19 UMP classic medicare enrollment.
- PEBB 2024-20 UMP classic medicare plan enrollment during gap month(s).
- PEBB 2024-21 Amending 2022-03 medicare advantage prescription drug plan.

3. Make other technical amendments:

- Amended WAC 182-12-171 to include an exception when the first premium payment and applicable premium surcharges are due to HCA and clarified PEBB participating employer group and UMP classic medicare plan enrollment procedures.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; HB 1008, section 1, chapter 164, Laws of 2023; SHB 1804, section 1, chapter 312, Laws of 2023; SSB 5275, section 5, chapter 13, Laws of 2023; and PEBB Resolutions.

Statute Being Implemented: RCW 41.05.021, 41.05.160; HB 1008, section 1, chapter 164, Laws of 2023; SHB 1804, section 1, chapter 312, Laws of 2023; SSB 5275, section 5, chapter 13, Laws of 2023.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024
Wendy Barcus
Rules Coordinator

OTS-5525.1

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-171 When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? A retiring employee or a retiring school employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if they meet procedural and substantive eligibility requirements as described in subsections (1), (2), and (3) of this section. An elected and full-time appointed official of the legislative and executive branch of state government is eligible as described in WAC 182-12-180.

(1) **Procedural requirements.** A retiring employee or a retiring school employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through ((~~(d)~~)) (e) of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than 60 days after the employee's or the school employee's own employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's or the school employee's employer-paid coverage, COBRA coverage, or continuation coverage ends;

Note: Enrollment in the PEBB program's medicare advantage (MA) ((~~or~~)) plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~Uniform Medical Plan (UMP) Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(b) The employee's or the school employee's first premium payment for PEBB retiree insurance coverage and applicable premium surcharges are due to the health care authority (HCA) no later than 45 days after the election period ends as described in (a) of this subsection, except as described in WAC 182-08-180 (1)(a). Following the employee's or the school employee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c); and

(c) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee;

Exceptions: (1) If a retiring employee or a retiring school employee selects a medicare supplement plan ((~~or~~)), a MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If a retiring employee or a retiring school employee selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(d) A nonmedicare retiring employee or retiring school employee must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.

(e) To defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must meet substantive eligibility requirements in subsection (2) of this section and defer enrollment as described in WAC 182-12-200 or 182-12-205.

(2) **Substantive eligibility requirements.**

An employee who is eligible for PEBB benefits through an employing agency, or a school employee who is eligible for SEBB benefits through a SEBB organization, a SEBB participating employer group, or basic benefits through an educational service district as defined in RCW 28A.400.270 who ends public employment may enroll or defer enrollment in PEBB retiree insurance coverage if they meet procedural and substantive eligibility requirements.

To be eligible to continue enrollment or defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must be vested in and eligible to retire under a Washington state-sponsored retirement plan when the employee's or school employee's own employer-

paid coverage, COBRA coverage, or continuation coverage ends. An exception to the requirement to be vested in and eligible to retire under a Washington state-sponsored retirement plan is provided for employees of ((~~an~~)) a PEBB participating employer group in (c)(i) of this subsection and for school employees of a SEBB participating employer group in (e)(i) of this subsection. To satisfy the requirement to immediately begin to receive a monthly retirement plan payment as described in (a), (b), (c)(ii), ((~~and~~)) (d), and (e)(ii) of this subsection, the employee or school employee must begin receiving a monthly retirement plan payment no later than the first month following the employee's or school employee's own employer-paid coverage, COBRA coverage, or continuation coverage ending.

(a) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a lump sum payment instead of a monthly retirement plan payment 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

(ii) A retiring employee who is a member of the teachers' retirement system Plan 2, school employees' retirement system Plan 2, or public employees' retirement system Plan 2, also called a separated employee as defined in RCW 41.05.011 (25)(b), who separates from employment on or after January 1, 2024, and who is at least age 55 with at least 20 years of service; or

(iii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee ((~~,~~))as defined in RCW 41.05.011 (25)(a)((~~), must meet their Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage~~)), who is at least age 55 with at least 10 years of service.

(b) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age 55 with 10 years of state service;

(c) 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 (c)(i) or (ii) of this subsection to be eligible to continue PEBB retiree insurance coverage.

(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 they were a member of public employees retirement system Plan 1, if their date of hire with that employer group or tribal government was before October 1, 1977, or Plan 2, if their date of hire with that employer group or tribal government was on or after October 1, 1977.

(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 (a)(i) ((~~and~~)), (ii), or (iii) of this subsection.

(iii) A retired employee of an employer group that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if they 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~~)) 182-12-232.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC ((~~182-12-146~~)) 182-12-232.

(d) A retiring school employee of a SEBB organization must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring school employee who ends employment before October 1, 1993; or

(ii) A retiring school employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the school employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the school employee enrolled before 1995; or

(iii) A retiring school employee who is a member of the teachers' retirement system Plan 2, school employees' retirement system Plan 2, or public employees' retirement system Plan 2, also called a separated employee as defined in RCW 41.05.011 (25)(b), who separates from employment on or after January 1, 2024, and who is at least age 55 with at least 20 years of service; or

(iv) A retiring school employee who is a member of a Plan 3 retirement system, also called a separated employee ((~~(~~))as defined in RCW 41.05.011 (25)(a)((~~), must meet their Plan 3 retirement eligibility criteria~~)), who is at least age 55 with at least 10 years of service; or

((~~(iv)~~)) (v) A school employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if they enrolled in a PEBB health plan no later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(e) A retiring school employee of an employer group participating in SEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (e)(i) or (ii) of this subsection to be eligible to continue PEBB retiree insurance coverage.

(i) A retiring school employee who is eligible to retire under a retirement plan sponsored by an employer group that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if they were a member of teachers retirement system Plan 1, if their date of hire with that employer group was before October 1, 1977, or Plan 2, if their date of hire with that employer group was on or after October 1, 1977.

(ii) A retiring school 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 (d)(ii), (iii), or (iv) of this subsection.

(iii) A retired school employee of an employer group that ends participation in SEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-232.

(3) A retiring employee or a retiring school employee and their enrolled dependents who are eligible for medicare must enroll and maintain enrollment in both medicare Parts A and B if the employee or the school employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(4) Washington state-sponsored retirement 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 Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB benefits at the time of retirement.

AMENDATORY SECTION (Amending WSR 22-13-160, filed 6/21/22, effective 1/1/23)

WAC 182-12-211 May an employee or a school employee who is determined to be retroactively eligible for disability retirement enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage? (1) An employee or a school 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 or the school employee submits the required form and a copy of the formal determination letter they received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's or the school employee's form and a copy of their Washington state-sponsored retirement system's formal determination letter are received by the PEBB program no later than 60 days after the date on the determination letter; and

(c) The employee or the school employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan benefit under their higher education retirement plan (HERP), with exceptions described below from WAC 182-12-171(2):

(i) A retiring employee of a state agency, ((~~an~~)) a retiring school employee of a school employees benefits board (SEBB) organization, or a retiring employee or a retiring school employee of an employer group participating under a Washington state sponsored retirement plan((~~, or a retiring school employee~~)) who receives a lump sum payment instead of a monthly retirement plan payment 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

(ii) A retiring employee of a state agency, a retiring school employee of a SEBB organization, or a retiring employee or retiring school employee of an employer group participating under a Washington state sponsored retirement plan who is a member of the teachers' retirement system Plan 2, school employees' retirement system Plan 2, or public employees' retirement system Plan 2, also called a separated employee as defined in RCW 41.05.011 (25)(b), who separates from employment on or after January 1, 2024, and who is at least age 55 with at least 20 years of service; or

(iii) A retiring employee of a state agency, ((~~an~~)) a retiring school employee of a SEBB organization, or a retiring employee or a retiring school employee of an employer group participating under a Washington state sponsored retirement plan((~~, or a retiring school employee~~)) who is a member of a Plan 3 retirement plan, also called a separated employee ((~~(~~))as defined in RCW 41.05.011 (25)(a)((~~), must meet their Plan 3 retirement eligibility criteria. The employee or the school employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage~~)), who is at least age 55 with at least 10 years of service; or

((~~(iii)~~)) (iv) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age 55 with 10 years of state service.

(2) The employee or the school employee, at their option, must indicate the date of enrollment or deferment in PEBB retiree insurance coverage on the form. The employee or the school employee may choose from the following dates:

(a) The 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.

Note: Enrollment in the PEBB program's medicare advantage (MA) ((~~or~~)) plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~Uniform Medical Plan (UMP) Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(3) The director may make an exception to the date of PEBB retiree insurance coverage described in subsection (2)(a) and (b) of this section; however, such request must demonstrate extraordinary circumstances beyond the control of the retiree.

(4) Premiums and applicable premium surcharges are due from the effective date of enrollment in PEBB retiree insurance coverage.

(5) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must

be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee.

Exceptions: (1) If a retiring employee or a retiring school employee selects a medicare supplement plan ((~~or~~)), MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees. (2) If a retiring employee or a retiring school employee selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(6) A nonmedicare retiring employee or retiring school employee must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.

WSR 24-14-131
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2024-01.05—Filed July 2, 2024, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-060.

Title of Rule and Other Identifying Information: **The following sections in chapter 182-08 WAC are being amended:** WAC 182-08-198 When may a subscriber change health plans? and 182-08-245 Employer group and board members of school districts and educational service districts participation requirements.

The following sections in chapter 182-12 WAC are being amended: WAC 182-12-146 When is an enrollee eligible to continue public employees benefits board (PEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)? and 182-12-262 When may subscribers enroll or remove eligible dependents?

The following section is new: WAC 182-12-232 What options for continuing health plan enrollment are available to a retiree of an employer group that ended participation in public employees benefits board (PEBB) or school employees benefits board (SEBB) insurance coverage?

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend rules to support the PEBB program:

1. Implement statutory changes in response to SHB 1804, section 1, chapter 312, Laws of 2023:

- Amended WAC 182-08-245 to include a new subsection.
- Amended WAC 182-12-146 by updating a subsection and adding a new subsection.
- Created WAC 182-12-232.
- Amended WAC 182-12-262 to add a reference to WAC 182-12-232.

2. Implement the following PEBB policy resolutions:

- PEBB 2024-14 Non-medicare retiree enrollment requirement.
- PEBB 2024-19 UMP classic medicare enrollment.
- PEBB 2024-20 UMP classic medicare plan enrollment during gap month(s).
- PEBB 2024-21 Amending 2022-03 medicare advantage prescription drug plan.

3. Make other technical amendments:

- Amended WAC 182-08-198 to include uniform medical plan (UMP) classic medicare plan disenrollment procedures.
- Amended WAC 182-08-245 to remove board members of school districts or educational service districts, clarified employer group for the PEBB program, and updated a WAC reference.
- Amended WAC 182-12-146 to include PEBB vision, removed a subsection that applies to [a] board member who longer qualifies as described in WAC 182-12-111 (4)(c), added an exception to the first premium payment and applicable premium surcharges requirement, and added an exception to when a subscriber or their dependent will be disenrolled from a medicare advantage plan, a medicare advantage-prescription drug plan, or the UMP classic medicare plan
- Amended WAC 182-12-262 to update the language that describe[s] a dependent must be enrolled in the same health plan coverage as the subscriber, added PEBB vision and the disenrollment process for UMP classic medicare plan, and updated the description of any other subscriber must submit the required forms to the PEBB program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.065, 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023; PEBB Resolutions.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023.

Rule is necessary because of federal law, 42 C.F.R. §§ 422.62(b) and 423.38(c).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024
Wendy Barcus
Rules Coordinator

OTS-5521.1

AMENDATORY SECTION (Amending WSR 23-14-016, filed 6/23/23, effective 1/1/24)

WAC 182-08-198 When may a subscriber change health plans? A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the public employees benefits board (PEBB) annual open enrollment period. A subscriber must submit the required enrollment forms to change their health plan. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for PEBB benefits as described in WAC 182-12-114 or regaining eligibility for PEBB benefits as described in WAC 182-08-197. The change in enrollment must be allowable under Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both.

A subscriber may not change their health plan during a special open enrollment if their state registered domestic partner or state registered domestic partner's child is not a tax dependent. A subscriber may change their health plan as described in subsection (1) of this section.

To disenroll from a medicare advantage (MA) plan ((~~or~~)), medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan, the change in enrollment must be allowable under 42 C.F.R. Secs. 422.62(b) and 423.38(c). To make a health plan change, a subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than 60 days after the event occurs, except as described in (i) of this subsection. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage 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, the change in enrollment begins on that day except for a MA ((~~or~~)) plan, a MA-PD plan, or the UMP Classic medicare plan which will begin the first day of the month following the date the form is received.

Exception: When a subscriber or their dependent is enrolled in a MA ((~~or~~)) plan, a MA-PD plan, or the UMP Classic medicare plan, they may disenroll during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c). The new medical plan coverage will begin the first day of the month following the date the ((~~medicare advantage~~)) plan disenrollment form is received.

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, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of

the event date or eligibility certification. 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 state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(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 has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(d) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability.

(i) If the subscriber has a change in residence and the subscriber's current medical plan is no longer available, the subscriber must select a new medical plan as described in WAC 182-08-196(3);

(ii) If the subscriber or the subscriber's dependent has a change in residence and the subscriber's current dental plan does not have available providers within 50 miles of the subscriber or the subscriber's dependent's new residence, the subscriber may select a new dental plan;

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent enrolls in 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 CHIP;

(i) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or terminates enrollment in a ((~~medicare advantage-prescription drug~~)) MA-PD or a Part D plan. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-08-196(2).

(j) A subscriber enrolled in PEBB retiree insurance coverage, a retired employee, a retired school employee, or a survivor enrolled in PEBB health plan coverage after their employer group ceased participation, or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has six months from the date of

their or their dependent's enrollment in medicare Part B to enroll in a PEBB medicare supplement plan for which they or their dependent is eligible. The forms must be received by the PEBB program no later than six months after the enrollment in medicare Part B for either the subscriber or the subscriber's dependent;

(ii) A subscriber enrolled in PEBB retiree insurance coverage, a retired employee, a retired school employee, or a survivor enrolled in PEBB health plan coverage after their employer group ceased participation, or an eligible subscriber enrolled in ((~~Consolidated Omnibus Budget Reconciliation Act (COBRA)~~)) COBRA coverage has seven months to enroll in a ((~~medicare advantage or medicare advantage-prescription drug~~)) MA plan, MA-PD plan, or the UMP Classic medicare plan that begins three months before they or their dependent first enrolled in both medicare Part A and Part B and ends three months after the month of medicare eligibility. A subscriber may also enroll themselves or their dependent in a ((~~medicare advantage or medicare advantage-prescription drug~~)) MA plan, MA-PD plan, or the UMP Classic medicare plan before their last day of the medicare Part B initial enrollment period. The forms must be received by the PEBB program no later than the last day of the month prior to the month the subscriber or the subscriber's dependent enrolls in the ((~~medicare advantage or medicare advantage-prescription drug~~)) MA plan, MA-PD plan, or the UMP Classic medicare plan.

(j) Subscriber or a subscriber's dependent's current medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(k) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the subscriber or the subscriber's dependent. A subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber'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:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period; or

(v) Treatment for a high-risk pregnancy;

(l) The PEBB program determines that there has been a substantial decrease in the providers available under a PEBB medical plan.

(3) If the employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-08-245 Employer group ((~~and board members of school districts and educational service districts~~)) participation requirements.

This section applies to an employer group for the public employees benefits board (PEBB) program as defined in WAC 182-08-015 ((~~or board members of school districts or educational service districts~~)) 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)~~)) PEBB insurance coverage, the employer group ((~~or board members of school districts or educational service districts~~)) 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 PEBB insurance coverage by the criteria outlined in this chapter and chapter 182-12 WAC unless otherwise approved by the authority 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 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 to be eligible; and

(e) Ensure PEBB insurance coverage is the only employer-sponsored coverage available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums under its contract with the authority. The premium rate structure for employer groups ((~~and board members of school districts and educational service districts~~)) will be a tiered rate based on health plan election and family enrollment. Employer groups must collect an amount equal to the premium surcharges 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~~)) 90 days advance written notice.

(3) Counties, municipalities, political subdivisions, and tribal governments must pay the monthly employer group rate surcharge in the amount invoiced by the authority.

(4) If an employer group ((~~or board member of school districts and educational service districts~~)) wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(5) The employer group ((~~or board members of school districts and educational service districts~~)) must maintain participation in PEBB insurance coverage for at least one full year. An employer group ((~~or board members of school districts and educational service districts~~)) 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 ((~~or board members of school districts and educational service districts~~)) must provide written notice to the PEBB program at least 60 days before the requested termination date. If an employer group terminates participation in PEBB insurance coverage, they must:

(a) Notify all their employees, dependents, or retirees who are enrolled in PEBB insurance coverage 45 days prior to the employer group's date of termination; and

(b) Provide assistance to retirees as described in RCW 41.04.208(12).

(6) 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 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 a PEBB health plan as COBRA subscribers for the remainder of the months available to them based on their qualifying event.

(7) 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 ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB retiree insurance coverage if they continue 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 ((~~on the same terms and conditions as retirees who are eligible under COBRA (see WAC 182-12-146)~~)) as described in WAC 182-12-232.

(8) Employer groups that enter into a contractual agreement with the authority on or after May 4, 2023, and whose contractual agreement is subsequently terminated, shall make a one-time payment to the authority for each of the employer group's retired or disabled employees who continue their participation in insurance plans and contracts under WAC 182-12-232.

(a) For each of the employer group's retired or disabled employees who will be continuing their participation, the authority shall determine the one-time payment by:

(i) Calculating the difference in cost between the rate charged to retired or disabled employees as described in RCW 41.05.080(2); and

(ii) The actuarially determined value of the medical benefits for retired and disabled employees who are not eligible for parts A and B of medicare; and

(iii) Multiplying that difference by the number of months until the retired or disabled employee would become eligible for medicare.

(b) Employer groups shall not be entitled to any refund of the amount paid to the authority as described in this subsection.

OTS-5524.1

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-146 When is an enrollee eligible to continue public employees benefits board (PEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)? (1) An employee or an employee's dependent who loses eligibility for the employer contribution toward public employees benefits board (PEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for all or any combination of PEBB medical, dental, or ((~~both~~)) vision.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, 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 any combination of PEBB medical, dental, or ((~~both~~)) vision for the remaining difference in months.

(3) A retired employee, a retired school employee, or survivor who loses eligibility for PEBB retiree insurance coverage because ((~~an~~)) their employer group ceases participation ((~~in PEBB insurance coverage~~)) with the authority may continue PEBB medical, dental, or ((~~both on the same terms and conditions as retirees who are eligible under COBRA~~)) vision as described in WAC 182-12-232.

(4) A dependent of a subscriber enrolled as described in WAC 182-12-232 who is no longer eligible as described in WAC 182-12-260 may continue any combination of PEBB medical, dental, or vision.

(5) A retiree or a dependent of a retiree, who is no longer eligible as described in WAC 182-12-171, 182-12-180, or 182-12-260 may continue any combination of PEBB medical, dental, or ((~~both~~)) vision.

((~~(5)~~)) (6) A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 (4)(a) may continue enrollment in PEBB medical for the maximum number of months allowed under COBRA as described in this section.

((~~(6) A board member who no longer qualifies as described in WAC 182-12-111 (4)(c) may continue enrollment in PEBB medical, dental, or both for the maximum number of months allowed under COBRA as described in this section.~~))

(7) An enrollee may continue any combination of PEBB medical, dental, or ((~~both~~)) vision under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the PEBB program no later than 60 days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(b) The first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than 45 days after the election period ends as described in (a) of this subsection, except as described in WAC 182-08-180 (1)(a). Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-12-114. Those who request to terminate their COBRA coverage must do so in writing. COBRA coverage will end on the last day of the month in which the PEBB program receives the termination request or on the last day of the month specified in the COBRA enrollee's termination request, whichever is later. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month;

Exception: When a subscriber or their dependent is enrolled in a medicare advantage plan, a medicare advantage-prescription drug plan, or the Uniform Medical Plan Classic medicare plan, the enrollment will terminate on the last day of the month when the plan disenrollment form is received.

(d) An employee enrolled in a ((~~medical~~)) flexible spending arrangement (FSA) or limited purpose FSA and the employee's dependents will have an opportunity to continue making contributions to their ((~~medical~~)) FSA or limited purpose FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec.

300bb-3, the employee's ((~~medical~~)) FSA or limited purpose FSA has a greater amount in remaining benefits than remaining contribution payments for the current year. The election must be received by the contracted vendor no later than 60 days from the date the PEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later. The first premium payment under COBRA coverage is due to the contracted vendor no later than 45 days after the election period ends as described above.

(8) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue any combination of PEBB medical, dental, or ((~~both~~)) vision on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(9) Medical ((~~and~~)), dental, and vision coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for PEBB health plan coverage as described in WAC 182-12-131, 182-12-133, 182-12-141, 182-12-142, 182-12-148, 182-12-171, 182-12-180, 182-12-250, 182-12-260, or 182-12-265.

NEW SECTION

WAC 182-12-232 What options for continuing health plan enrollment are available to a retiree of an employer group that ended participation in public employees benefits board (PEBB) or school employees benefits board (SEBB) insurance coverage? (1) A retired employee, a retired school employee, or an eligible survivor of an employee, school employee, or retiree of an employer group as defined in WAC 182-12-109 who loses eligibility for public employees benefits board (PEBB) retiree insurance coverage due to the employer group ending participation in PEBB or school employees benefits board (SEBB) insurance coverage may continue enrollment in PEBB health plan coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA). A retired employee, a retired school employee, or a survivor enrolled under this section is not eligible for any subsidy provided under RCW 41.05.085.

(2) A retired employee, a retired school employee, or a survivor as described in subsection (1) of this section may enroll in PEBB medical, dental, or vision.

(a) The required forms must be received by the PEBB program no later than 60 days after the employer group's date of termination. The effective date of enrollment in PEBB health plan coverage will be the first day of the month following the day eligibility for PEBB retiree insurance coverage ended.

Note: Enrollment in the PEBB program's medicare advantage (MA) plan, medicare advantage prescription-drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB health plan coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB health plan coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB health plan coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(b) The first premium payment and applicable premium surcharges are due to HCA no later than 45 days after the election period ends as described in (a) of this subsection. Following the first premium pay-

ment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c).

Note: An employer group as defined in WAC 182-12-109 that enters into a contractual agreement with the HCA on or after May 4, 2023, and whose contractual agreement is subsequently terminated, shall make a one-time payment to the HCA for each of the employer group's retired or disabled employees who continue participation under this section as described in RCW 41.05.083.

(c) If a retired employee, a retired school employee, or a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retired employee, retired school employee, or survivor.

Exceptions: (1) If a retired employee, a retired school employee, or a survivor selects a medicare supplement plan, a MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP classic. If a retired employee, a retired school employee, or a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If a retired employee, a retired school employee, or a survivor selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(3) A subscriber enrolled under this section may continue PEBB health plan coverage until they request to terminate enrollment as described in subsection (4) of this section, or premiums and applicable premium surcharges are no longer paid as described in WAC 182-08-180 (1)(c). If PEBB health plan coverage is terminated for these reasons, the subscriber and their enrolled dependents will not be eligible to reenroll under this section.

(4) A subscriber enrolled under this section who requests to voluntarily terminate their PEBB health plan coverage must do so in writing. PEBB health plan coverage will end on the last day of the month in which the PEBB program receives the termination request or on the last day of the month specified in the subscriber's termination request, whichever is later. If the termination request is received on the first day of the month, PEBB health plan coverage will end on the last day of the previous month.

Exception: When a subscriber or their dependent is enrolled in a MA plan, a MA-PD plan, or the UMP Classic medicare plan, the enrollment in PEBB health plan coverage will terminate on the last day of the month when the plan disenrollment form is received.

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in public employees benefits board (PEBB) health plan coverage, supplemental dependent life insurance, and accidental death and dismemberment (AD&D) insurance.** A dependent must be enrolled in the same health plan coverage as the subscriber ((~~except as described in WAC 182-12-171 (1)(c)~~)) unless otherwise described in the Washington Administrative Code applicable to the subscriber. The subscriber must be enrolled in health plan coverage to enroll their dependent in health plan coverage except as provided in WAC 182-12-205 (3)(c). A dependent with more than one source of eligibility for enrollment in the PEBB and school employees benefits board (SEBB) programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. Subscribers must satisfy the enrollment requirements as described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in PEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) PEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life insurance or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(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;

(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child in health plan coverage as described in WAC 182-12-263; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance. Supplemental dependent life insurance or AD&D insurance will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(2) **Removing dependents from a subscriber's PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260. Subscribers must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of a dependent ceasing to be eligible as a dependent child, as described in WAC 182-12-260(3). For supplemental dependent life insurance or AD&D insurance, subscribers must notify the contracted vendor on the required form, in writing, or by telephone when a dependent is no longer eligible. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan. For PEBB health plan coverage, the notice must be received within 60 days of the last day of the month the dependent loses eligibility. Employees must notify their employing agency when a dependent is no longer eligible for PEBB health plan coverage, except as required under WAC 182-12-260 (3)(g)(ii). All other subscribers must notify the PEBB program. Consequences for not submitting notice within the required 60 days include, but are not limited to:

(i) The dependent may lose eligibility to continue PEBB medical ((~~or~~)), dental, or vision 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 as described in WAC 182-12-270;

(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 eligible dependents:**

(i) During the annual open enrollment. The dependent will be removed from PEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-12-263(2); or

(iv) Any time during the calendar year from supplemental dependent life insurance or AD&D insurance by submitting a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan.

(c) **Retirees (see WAC 182-12-171, 182-12-180, or 182-12-211), survivors (see WAC 182-12-180, 182-12-250, or 182-12-265), ((~~and~~)) PEBB continuation coverage enrollees (see WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148), and retired employees, retired school employees, or survivors continuing PEBB health plan coverage after their employer group ceased participation (see WAC 182-12-232) may remove dependents** from their PEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. The dependent will be removed from the subscriber's PEBB health plan coverage prospectively. PEBB health plan coverage will end on the last day of the month in which the written notice is received by the PEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, PEBB health plan coverage will end on the last day of the previous month. PEBB continuation coverage enrollees may remove dependents from supplemental dependent life insurance or AD&D insurance any time during the calendar year by submitting a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan.

(3) **Special open enrollment.**

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury Regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both. To disenroll from a medicare advantage (MA) ((~~or~~)) plan, a medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan, the change in enrollment must be allowable under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(i) PEBB 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 except for a MA ((~~or~~)) plan, a MA-PD plan, or the UMP Classic medicare plan, which will begin the first day of the month following the date the form is received.

(ii) PEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's PEBB health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event 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.

(iv) 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, PEBB health plan coverage will begin or end as follows:

• For the newly born child, PEBB health plan coverage will begin the date of birth;

• For a newly adopted child, PEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

• For a spouse or state registered domestic partner of a subscriber, PEBB health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from PEBB health plan coverage the last day of the month in which the event occurred.

(v) Supplemental dependent life insurance or AD&D insurance will begin the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) The events described in this subsection (3)(b)(i) of this section create a special open enrollment to enroll eligible dependents in supplemental dependent life insurance or AD&D insurance. Any one of the following events may create a special open enrollment to enroll or remove eligible dependents from PEBB health plan coverage:

(i) Subscriber acquires a new dependent due to:

• Marriage or registering a state registered domestic partnership;

• Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) 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);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) 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 and that change in residence resulted in the dependent losing their health insurance;

(vii) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the

subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(viii) Subscriber or a subscriber's dependent enrolls in 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;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

(4) **Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection.** For PEBB health plan coverage, an employee must submit the required forms to their employing agency, ((~~a~~)) any other subscriber ((~~on continuation coverage or PEBB retiree insurance coverage~~)) must 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. All required forms and documents must be received within the required time frames. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the PEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in PEBB health plan coverage when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the required time frame described in WAC 182-08-197, 182-12-171, 182-12-180, 182-12-211, 182-12-232, or 182-12-250. If an employee enrolls a dependent in supplemental dependent life insurance or AD&D insurance, the required form must be submitted within the required time frame described in WAC 182-08-197.

(b) If a subscriber wants to enroll eligible dependents in PEBB health plan coverage 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 forms must be received no later than 60 days after the dependent becomes eligible. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. An employee may enroll a dependent in supplemental dependent life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(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 in PEBB health plan coverage, the subscriber should notify the PEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be

received no later than 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval no later than 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age 26 or older as a child with a disability in PEBB health plan coverage, the required forms must be received no later than 60 days after the child reaches age 26 or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must be received by the PEBB program or the contracted vendor by the child's scheduled PEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in PEBB health plan coverage during a special open enrollment, the required forms must be received no later than 60 days after the event that creates the special open enrollment.

Exception: If the subscriber wants to change a dependent's enrollment or disenrollment in a ((~~medicare advantage or medicare advantage-preseription drug~~)) MA plan, a MA-PD plan, or the UMP Classic medicare plan, the required forms must be received during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(g) An employee may enroll a dependent in supplemental dependent life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

WSR 24-14-133
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2024-01.06—Filed July 2, 2024, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-060.

Title of Rule and Other Identifying Information: The following section is being amended: WAC 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if an employee, a school employee, or a retiree dies?

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC 182-12-265 to support the PEBB program:

1. Implement statutory changes:

- Included language that addresses continued enrollment for a survivor of a retiree when the retiree dies to implement HB 2481, section 1, chapter 185, Laws of 2024.
- Included language that clarifies eligibility for continued enrollment in PEBB health plan coverage to implement SHB 1804, section 1, chapter 312, Laws of 2023.

2. Implement PEBB policy resolutions:

- PEBB 2024-14 Non-medicare retiree enrollment requirement.
- PEBB 2024-19 UMP classic medicare enrollment.
- PEBB 2024-20 UMP classic medicare enrollment during gap months.
- PEBB 2024-21 Amending PEBB 2022-03 medicare advantage prescription drug plan enrollment during gap months.
- PEBB 2024-26 PEBB retiree insurance coverage deferral – permanently live in a location outside of the United States.

3. Make technical amendments:

- Removed language related to Washington State Educational Service Districts.
- Added WAC 182-12-232 references that describe when a survivor who loses eligibility may continue health plan enrollment.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.065, 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023; HB 2481, section 1, chapter 185, Laws of 2024; PEBB Resolutions.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SHB 1804, section 1, chapter 312, Laws of 2023; HB 2481, section 1, chapter 185, Laws of 2024.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024
Wendy Barcus
Rules Coordinator

OTS-5526.1

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if an employee, a school employee, or a retiree dies? The survivor of an eligible employee, an eligible school employee, or a retiree who meets the eligibility criteria and submits the required forms as described in subsection (1), (2), or (3) of this section is eligible to enroll or defer enrollment as a survivor under public employees benefits board (PEBB) retiree insurance coverage. If enrolling in PEBB retiree insurance coverage, the survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than 45 days after the election period ends as described in subsection (1), (2), or (3) of this section, except as described in WAC 182-08-180 (1)(a). Following the survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c).

(1) An employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system. To satisfy the requirement to immediately receive a monthly retirement benefit they must begin receiving monthly benefit payments no later than 120 days from the date of death of the employee. The required forms to enroll or defer enrollment must be received by the PEBB program no later than 60 days after the later of the date of the employee's death or the date the survivor's PEBB insurance coverage ends.

Note: Enrollment in the PEBB program's medicare advantage (MA) ((~~or~~)) plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~Uniform Medical Plan (UMP) Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Notes: If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, they may continue health plan enrollment as described in WAC 182-12-146.

Eligibility for continued enrollment in PEBB retiree insurance coverage for the surviving spouse, surviving state registered domestic partner, or surviving child of an employee of a PEBB participating employer group will cease at the end of the month in which the group's contract with the authority ends. Any survivor who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-232.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an elected and full-time appointed official of the legislative and executive branches of state government is described in WAC 182-12-180.

(2) A retiree's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage as described in (a) through (d) of this subsection. ((~~The required forms to enroll or defer enrollment must be received by the PEBB program no later than 60 days after the retiree's death.~~))

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is enrolled in a PEBB health plan at the time of the retiree's death, the survivors will be enrolled in the same PEBB health plan coverage they were enrolled in effective the first day of the month in which the retiree's death occurred. Eligible survivors may continue PEBB health plan coverage as described in (a) and (b) of this subsection. An eligible survivor may make changes to their PEBB health plan coverage or defer enrollment by submitting the required forms to the PEBB program. The required forms must be received no later than 60 days after the retiree's death. Changes in PEBB health plan coverage will be effective the first day of the month following the date of the retiree's death.

(d) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the survivor is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The

required forms to enroll or defer enrollment must be received by the PEBB program no later than 60 days after the retiree's death. For a survivor to enroll in a PEBB health plan who is not enrolled due to the retiree electing to defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 or 182-12-205 (3)(a) through (e), the survivor must also provide evidence of continuous enrollment in one or more qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) from the most recent open enrollment for which the survivor was not enrolled in a PEBB medical plan prior to the retiree's death. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage was deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. If a retiree elected to defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-205 (3)(e), the survivor must provide proof of enrollment in medicare parts A and B; evidence of continuous enrollment in a qualified coverage is waived as described in WAC 182-12-205 (6)(e).

Note: Eligibility for continued enrollment in PEBB retiree insurance coverage for the surviving spouse, surviving state registered domestic partner, or surviving child of an employer group retiree will cease at the end of the month in which the group's contract with the authority ends. Any survivor who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-232.

(3) A school employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible school employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage at the time of the school employee's death, provided the employee died on or after October 1, 1993. The survivor must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW. The required forms to enroll or defer enrollment must be received by the PEBB program no later than 60 days after the later of the date of the school employee's death or the date the survivor's ((~~educational service district coverage, or~~)) school employees benefits board (SEBB) insurance coverage ends.

Note: Enrollment in the PEBB program's MA ((~~or~~)) plan, MA-PD plan, or the UMP Classic medicare plan may not be retroactive.
(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.
(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((~~UMP Classic~~)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.
(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(a) The school employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The school employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Notes: If a spouse, state registered domestic partner, or child of an eligible school employee is not eligible for a retirement benefit allowance, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, a spouse, state registered domestic partner, or child of an eligible school employee enrolled in SEBB insurance coverage may continue health plan enrollment as described in WAC 182-31-090.
Eligibility for continued enrollment in PEBB retiree insurance coverage for the surviving spouse, surviving state registered domestic partner, or surviving child of a school employee of a SEBB participating employer group will cease at the end of the month in which the group's contract with the authority ends. Any survivor who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-232.

(4) If premiums and applicable premium surcharges received by the HCA are sufficient as described in WAC 182-08-180 (1)(d)(ii) to maintain PEBB health plan enrollment after the employee, school employee, or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the survivor's enrollment ended due to the death of the employee, school employee, or retiree, the PEBB program will reinstate

the survivor's enrollment without a gap subject to payment of premium and applicable premium surcharges.

(5) If a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the survivor.

Exceptions: (1) If a survivor selects a medicare supplement plan ((~~or~~)), a MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If a survivor selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(6) A nonmedicare survivor must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.

(7) In order to avoid duplication of group medical coverage, a survivor may defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 and 182-12-205.

WSR 24-14-136
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed July 2, 2024, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-054.

Title of Rule and Other Identifying Information: The licensing division (LD) is proposing amendments to WAC 110-148-1330 May I receive more than one in-home family license? and 110-300-0425 Initial, nonexpiring, dual licenses, and license modification.

LD is also proposing a new WAC 110-300-0430 Authority and requirements to possess more than one license.

Hearing Location(s): On August 6, 2024, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including August 6, 2024, will be considered.

Date of Intended Adoption: August 7, 2024.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, beginning July 3, 2024, 8:00 a.m., by August 6, 2004 [2024], 11:59 p.m.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by July 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules allow a family home to be licensed for both foster care and child care. The anticipated effects are more child care options within communities and increased placement options for children needing foster care. Furthermore, the proposed rules allow for continuity of care which is expected to create more stable experiences for impacted children.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 74.15.030, 43.216.055, 43.216.065, and 43.216.250.

Statute Being Implemented: RCW 74.15.030 and 43.216.250.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle Giard, 509-312-1302; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

July 2, 2024
Brenda Villarreal
Rules Coordinator

OTS-5568.1

AMENDATORY SECTION (Amending WSR 22-11-091, filed 5/18/22, effective 6/18/22)

WAC 110-148-1330 May I receive more than one in-home family license and what are the requirements for requesting and holding multiple licenses, certifications, or authorizations? (1) ((~~In rare situations and at our discretion, we may allow a family to be licensed for foster care and another type of in-home family care. The LD senior administrator may grant approval if it appears to be in the best interest of a child.~~

~~(2) If you have more than one in-home family license:~~

~~(a) It must be clear that the health and safety of children is not compromised; and~~

~~(b) The total number of children allowed in your home will not be higher than DYCF's allowed maximum capacity. All licensing agencies must be in agreement.~~)) The department may approve licensees' request to have more than one department license, certification, or authorization, e.g., child care license and foster care license.

(2) If providers hold both a child care license and a foster care license, the providers must comply with WAC 110-300-0300 and develop and follow a written individual care plan for every child in care with developmental, health, or behavioral needs.

(3) To offer overnight child care, licensees who hold both a child care early learning program license authorized under chapter 110-300 WAC, and a foster family home license authorized under this chapter, must comply with:

(a) WAC 110-300-0270; and

(b) All other applicable rules under this chapter and chapter 110-300 WAC.

(4) Applicants must submit a complete licensing application for each license they are seeking:

(a) The license application must be completed by the applicant pursuant to the laws and rules that govern each license; and

(b) For applicants who apply for more than one license, the department must conduct an individualized assessment of each complete license application prior to approving or denying an application for any license, certification, or authorization requested by the applicant.

(5) When requests are received for multiple licenses, the department will determine the capacity limits for each license based on the requirements in:

(a) Title 110 WAC; and

(b) The chapter within Title 110 WAC that authorizes the license.

(6) If the department determines that licensees are not in compliance with all applicable requirements and regulations for any license, certification, or authorization:

(a) The department and licensees may mutually agree to amend one or more of the licenses, certifications, or authorizations;

(b) The licensees may voluntarily agree to surrender or relinquish one or more of the licenses, certifications, or authorizations to the department; or

(c) The department may issue fines or suspend, deny, modify, or revoke one or more of the licenses as outlined in RCW 43.216.325 and 74.15.130.

OTS-5569.1

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0425 Initial((,)) and nonexpiring((, dual)) licenses((, and license))—Reporting—License modification. (1) The department may issue an initial license ((when)) authorized under RCW 43.216.315 to an early learning program applicant when they demonstrate((s compliance)) their early learning program will be able to comply with the health and safety requirements ((of)) described in this chapter ((but may not be in)). They do not have to demonstrate full compliance with all requirements((, pursuant to RCW 43.216.315)) that are not related to health and safety for initial license eligibility.

(a) An initial license is valid for six months from the date issued((.));

(b) At the department's discretion, an initial license may be extended for up to three additional six-month periods, not to exceed a total of two years((.)); and

(c) The department must evaluate the early learning provider's ability to follow requirements contained in this chapter during the initial license period.

(2) The department may issue a nonexpiring license to a licensee operating under an initial license who demonstrates compliance with the requirements of this chapter during the period of initial licensure, pursuant to RCW 43.216.305.

(3) ((A licensee)) Licensees must submit the following annual compliance documents at least ((thirty)) 30 calendar days ((prior to that provider's)) before their anniversary date((. A provider's anniversary date)), which is the date ((the)) their first initial license was issued. ((Pursuant to RCW 43.216.305,)) The required annual compliance documents are:

(a) The annual nonrefundable license fee;

(b) A declaration on the department's form indicating:

(i) The intent to continue operating a licensed early learning program;

(ii) The intent to cease operation as a licensed early learning program;

(iii) A change in the early learning program's operational hours or dates; and

(iv) The intent to comply with all licensing rules.

(c) Documentation of completed background checks ((~~applications~~)) for required individuals as determined by the department's established schedule, pursuant to RCW 43.216.270(2)((~~; and~~

~~(d)~~)). For ((~~each~~)) individuals required to have a background check clearance, the early learning provider must either:

(i) Verify current background checks; or

(ii) Require ((~~the~~)) individuals to submit a background check application at least ((~~thirty~~)) 30 calendar days prior to the anniversary date.

(4) If ((~~a~~)) licensees fail((~~s~~)) to meet the requirements for continuing a nonexpiring license by their anniversary date, ((~~the licensee's~~)) their current license will expire((~~s. The early learning provider must~~)) and the licensee will be required to submit a new application for licensure((~~, pursuant to RCW 43.216.305(3)~~)).

(5) ((~~Nothing about~~)) The nonexpiring license process in this section may not interfere with the department's established monitoring practices, ((~~pursuant to~~)) as described in RCW 43.216.305 ((~~(4)(a)~~)).

(6) ((~~A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring license resulting from a failure to comply with the requirements of this section.~~)) The department may let a license expire, not be renewed, or not be continued when early learning providers fail to comply with the requirements of this section. Providers cannot appeal the department's decision and have no rights to a hearing.

(7) ((~~A licensee must have department approval to hold dual licenses (for example: An early learning program license and another care giving license, certification, or similar authorization).~~

~~(8) If the department determines that a licensee is not meeting all applicable requirements and regulations:~~

~~(a) The department and licensee may agree to modify the child care license;~~

~~(b) The licensee may give up one of the licenses, certifications, or authorizations; or~~

~~(c) The department may suspend, deny, or revoke the early learning license, pursuant to RCW 43.216.325.~~

~~(9) An~~)) Early learning providers must report the following information within ((~~twenty-four~~)) 24 hours of becoming aware to the:

(a) ((~~To the~~)) Department and local authorities((~~: A~~)) if there has been, or is, a fire or other structural damage to the early learning program space or other parts of the premises((~~,~~)), including any structural damage caused by a natural disaster.

(b) ((~~To the~~)) Department:

(i) Allegations, a reasonable basis to believe, or findings of abuse or neglect that both:

(A) Are made against the early learning provider, an early learning provider employee or volunteer, or a household member; and

(B) Involve the abuse, neglect, maltreatment, or exploitation of a child, youth, or vulnerable adult;

(ii) A retirement, termination, death, incapacity, or change of the program director, or program supervisor((~~, or~~));

(iii) A change of ownership or incorporation of ((~~a provider;~~

~~(ii) When a provider becomes aware of a charge or conviction against themselves, a staff person or, applicable household member, pursuant to WAC 110-06-0043;~~

~~(iii) When a provider becomes aware of an allegation or finding of abuse, neglect, maltreatment, or exploitation of a child or vulnerable adult made against themselves, a staff person, or a house hold member, if applicable;~~

~~(iv)~~)) the early learning provider's business entity that is responsible for providing the early learning program;

(iv) Criminal charges or convictions against:

(A) Themselves;

(B) An early learning program employee or volunteer; or

(C) An early learning provider's household member;

(v) A change in the number of household members living within a family home early learning program space. This includes individuals ((~~fourteen~~)):

(A) Age 14 years old or older that move in or out of the home((~~, or a resignation or termination~~));

(B) Who resign or are terminated, pursuant to RCW 43.216.390((~~. A birth or death affecting the number of household members must be reported within twenty-four hours or at first opportunity~~)); and

(C) Who are born or who have died; and

((~~(v)~~)) (vi) Any changes in the early learning program hours of operation ((~~to include~~)), including planned closure dates.

((~~(10)~~)) (8) Prior to increasing capacity of an early learning program, ((~~the licensee, center director, assistant director, or program supervisor must request and be approved to increase capacity by the department~~)) early learning providers must make a request to the department for a capacity increase. The department or tribal authority may approve or deny the early learning provider's capacity increase.

((~~(11) Licensee, center director, assistant director, or program supervisor must have~~)) (9) The state fire marshal or department ((~~approval and comply with local building ordinances following a significant change~~)) must approve any change or modification described under WAC 110-300-0402 (1)(a) through (c)((~~, if applicable~~)). All changes or modifications to the premises must comply with all building codes and ordinances.

((~~(12)~~)) (10) If the liability insurance described in RCW 43.216.700 is terminated, the licensee, center director, assistant director, or program supervisor must notify the department within ((~~thirty~~)) 30 calendar days ((~~when~~)) of the date the liability insurance ((~~coverage under RCW 43.216.700~~)) has ((~~lapsed or~~)) been terminated.

NEW SECTION

WAC 110-300-0430 Authority and requirements to possess more than one license. (1) The department may approve licensees' request to possess more than one department license, certification, or authorization, i.e., child care license and foster care license.

(2) In order to offer overnight child care, licensees who have both a child care early learning program license authorized under this chapter, and a foster family home license authorized under chapter 110-148 WAC, must comply with:

(a) WAC 110-300-0270; and

(b) All other applicable rules under this chapter and chapter 110-148 WAC.

(3) Applicants must submit a complete license application for each license they are seeking and:

(a) The license application must be completed by the applicant pursuant to the laws and rules that govern each license; and

(b) For applicants who apply for more than one license, the department must conduct an individualized assessment of each complete license application prior to approving or denying an application for any license, certification, or authorization requested by the applicant.

(4) When requests are received for multiple licenses, the department will determine the capacity for each license based on the requirements in:

(a) Title 110 WAC; and

(b) The chapter within Title 110 WAC that authorizes the license.

(5) If the department determines that licensees are not in compliance with all applicable requirements and regulations for any license, certification, or authorization:

(a) The department and licensees may mutually agree to amend one or more of the licenses, certifications, or authorizations;

(b) The licensees may voluntarily agree to surrender or relinquish one or more of the licenses, certifications, or authorizations to the department; or

(c) The department may issue fines or suspend, deny, modify, or revoke one or more of the licenses as outlined in RCW 43.216.325 and 74.15.130.

WSR 24-14-137
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed July 2, 2024, 4:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-19-077.

Title of Rule and Other Identifying Information: The early learning division (ELD) is proposing amendments to WAC 110-15-0003 Definitions, 110-15-0005 Eligibility, 110-15-0015 Determining family size, 110-15-0024 Categorical eligibility for families receiving child protective, child welfare, or family assessment response services, 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst, and 110-15-0075 Determining income eligibility and copayment amounts.

Hearing Location(s): On August 6, 2024, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including August 6, 2024, will be considered.

Date of Intended Adoption: August 7, 2024.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, beginning July 3, 2024, 8:00 a.m., by August 6, 2004 [2024].

Assistance for Persons with Disabilities: DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by July 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are currently in effect under emergency status and expand eligibility to people working in licensed child care centers and licensed family homes, specialty and therapeutic court participants, and undocumented children. This rule making will also establish eligibility for families with a parent participating in a state-registered apprenticeship with income less than 85 percent of the state median income who, within the last year, were approved for working connections child care.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: 2SSB 5225, 2SHB 1525; chapter 43.216 RCW.

Statute Being Implemented: 2SSB 5225, 2SHB 1525; chapter 43.216 RCW.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Toni Sebastian, 206-200-0824; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.
Scope of exemption for rule proposal:
Is fully exempt.

July 2, 2024
Brenda Villarreal
Rules Coordinator

OTS-5105.6

AMENDATORY SECTION (Amending WSR 22-12-072, filed 5/27/22, effective 7/1/22)

WAC 110-15-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Administrative error" means an error made by ((~~DCYF~~)) the department through no fault of the consumer or provider.

"Approved activity" means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

"Authorization" means the transaction created by ((~~DCYF~~)) the department which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

"Benefit" means a regular payment made by a government agency on behalf of a person eligible to receive it.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person eligible to receive:

(a) Working connections child care (WCCC) benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

"Days" means calendar days unless otherwise specified.

"Department of children, youth, and families (DCYF)" or **"department"** means the Washington state department of children, youth, and families.

"DSHS" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

"Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Eligibility period" means the months for which households are eligible to receive WCCC or SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by ((~~DCYF~~)) the department, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to themselves or another person. See RCW 74.04.004.

"Full-time student" means a consumer who attends a community, technical, or tribal college and meets its definition of full-time student.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

"In-home/relative provider" or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing standards and is approved for ((~~working connections child care (~~))WCCC((~~)~~)) payment under WAC 110-15-0125.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"Infant" means a child from birth to 11 months.

"Living in the household" means people who reside at the same physical address.

"Lump-sum payment" means a single payment that is not anticipated to continue.

"Newly eligible consumer" means a consumer that has at least one full calendar month break in benefit eligibility.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Overpayment" means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

"Parental control" means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

"Preschool age child" means a child age 30 months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means a failure to adhere to program requirements, which results in an overpayment.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

((~~**"SCC"** means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.~~))

"School age child" means a child who is between five years of age through 12 years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonal child care program (SCC)" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

"Second tier eligibility" means an increased income limit for eligible families who reapply before the end of their current eligibility period.

"Self-employment" means engaging in a legal, income-generating activity earned directly from an individual's trade or business that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S.

"Sign" means placing a name or legal mark on a document by physically writing or using an electronic signature.

"Specialty court" means the same as defined in RCW 2.30.020.

"State median income (SMI)" means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

"TANF" means temporary assistance for needy families, a cash assistance program administered by DSHS.

"Technical assistance" means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

"Therapeutic court" means the same as defined in RCW 2.30.020.

"To the extent of available funds" means one or more of the following:

(a) Limited or closed enrollment;

(b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or

(c) Subject to a waiting list.

"Unintentional" means not done willfully or on purpose.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

"Working connections child care (WCCC)" means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0005 Eligibility. (1) Consumers((~~. At~~)) at the time of application and reapplication((~~,~~)) must meet the following requirements to be eligible for WCCC((~~, consumers must~~)):

(a) Have parental control of one or more eligible children;

(b) Live in ((~~the state of~~)) Washington state;

(c) Participate in an approved activity or meet the eligibility special circumstances requirements under WAC 110-15-0020, 110-15-0023, or 110-15-0024;

(d) ((~~Have countable income at or below 60 percent of the SMI at initial application or at or below 65 percent of the SMI at reapplication;~~

~~(e)~~)) Not have assets that exceed $1,000,000; ((~~and~~

~~(f)~~)) (e) Have an agreed payment arrangement with any provider to whom any outstanding WCCC copayment is owed; and

(f) Have one of the following:

(i) Countable income at or below:

(A) Sixty percent of the SMI at initial application; or

(B) Sixty-five percent of the SMI at reapplication;

(ii) A household annual income adjusted for family size that does not exceed 75 percent of the SMI within the first 12 months of a state-registered apprenticeship program; or

(iii) Be employed by a licensed or certified child care provider as confirmed or verified in the department's electronic workforce registry and have a household annual income adjusted for family size that does not exceed 85 percent of the SMI.

(2) Parents currently attending high school or who are age 21 or younger and completing a high school equivalency certificate are eligible for WCCC if their income does not exceed 85 percent of the SMI at the time of application.

(3) Children((~~.~~)) must meet the following requirements to be eligible for WCCC((~~, children must~~)):

(a) ((~~Belong to one of the following groups as defined in WAC 388-424-0001:~~

~~(i) A U.S. citizen;~~

~~(ii) A U.S. national;~~

~~(iii) A qualified alien; or~~

~~(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.~~

~~(b) Legally~~)) Reside in Washington state((~~, which will be determined by applying the criteria of WAC 388-424-0001 or 388-468-0005~~)); and

((~~(c)~~)) (b) Be less than ((~~13 years of~~)) age:
(i) Thirteen on the first day of eligibility; or
((~~(d) Be less than 19 years of age, and:~~
~~(i)~~)) (ii) Nineteen and:
(A) Have a verified special need, ((~~according to~~)) as outlined in WAC 110-15-0020; or
((~~(ii)~~)) (B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0015 Determining family size. (1) ((~~DCYF~~)) The department determines a consumer's family size ((~~as follows~~)) for:
(a) ((~~For a~~)) Single parents, including a minor parent living independently, ((~~DCYF counts~~)) by counting the consumer and the consumer's children;
(b) ((~~For~~)) Unmarried parents who have:
(i) At least one mutual child, ((~~DCYF counts~~)) by counting both parents and all of their children living in the household;
((~~(c) Unmarried parents who have~~)) (ii) No mutual children ((~~are counted as separate WCCC households~~)), by counting the unmarried parents and their respective children when living in the same household as separate WCCC households;
((~~(d) For~~)) (c) Married parents, ((~~DCYF counts~~)) by counting both parents and all of their children living in the household;
((~~(e) For parents who are undocumented aliens as defined in WAC 388-424-0001, DCYF counts the parents and children, documented and undocumented, and all other family rules in this section apply. Children needing care must meet citizenship requirements described in WAC 110-15-0005;~~
~~(f) For a~~)) (d) The following individuals by counting only the children and only the children's income:
(i) Legal guardians verified by a legal or court document((~~,~~));
(ii) Adult siblings ((~~or~~)), step-siblings, nephews, nieces, aunts, uncles, grandparents, any of these relatives with the prefix "great," such as a "great-nephew((~~,~~))"; or ((~~an in~~))
(iii) In loco parentis custodians who ((~~is~~)) are not related to the child as ((~~described~~)) defined in WAC ((~~110-15-0005, DCYF counts only the children and only the children's income is counted~~)) 110-15-0003;
((~~(g) For a~~)) (e) Parents who ((~~is~~)) are out of the household because of employer requirements, such as training or military service, and expected to return to the household, ((~~DCYF counts~~)) by counting the consumer, the absent parent, and the children;
((~~(h) For a~~)) (f) Parents who ((~~is~~)) are voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household, ((~~DCYF counts~~)) by counting the consumer, the absent parent, and the children((~~. WAC 110-15-0020 and all other family and household rules in this section apply~~));
((~~(i) For a~~)) (g) Parents who ((~~is~~)) are out of the country and waiting for legal reentry ((~~in to~~)) into the United States, ((~~DCYF counts~~)) by counting only the consumer and children residing in the United States ((~~and all other family and household rules in this section apply~~));

((~~(j) An~~)) (h) Incarcerated ((~~parent is~~)) parents who are not part of the household ((~~count for~~)) by counting them when determining income and eligibility((~~. DCYF counts the remaining household members using all other family rules in this section~~)); and

((~~(k) For a parent~~)) (i) Incarcerated parents residing at a Washington state correctional facility whose ((~~child~~)) children live((~~s~~)) with them at the facility, ((~~DCYF counts the parent~~)) by counting them and their child as their own household.

(2) When ((~~the~~)) households consist((~~s~~)) of the consumer's own ((~~child and another child~~)) children and other children identified in subsection (1)((~~(f)~~)) (d) of this section, the household may be:

(a) Combined into one household; or

(b) Kept as distinct households for the benefit of the consumer.

AMENDATORY SECTION (Amending WSR 23-23-082, filed 11/13/23, effective 12/14/23)

WAC 110-15-0024 Categorical eligibility ((~~for families receiving child protective, child welfare, or family assessment response services~~)). (1) Families with children ((~~who have received~~)) are eligible for WCCC benefits for a 12-month period if the consumer is a Washington state resident and their children are living with a biological parent or guardian and:

(a) In the six months prior to application or reapplication for WCCC benefits, the family received:

(i) Child protective services (CPS) as defined and used by chapters 26.44 and 74.13 RCW((~~,~~)); or

(ii) Child welfare services as defined and used by chapter 74.13 RCW((~~,~~)); or

(iii) Services through a family assessment response, as defined and used by chapter 26.44 RCW ((~~in the six months previous to application or reapplication for working connections child care (WCCC) benefits are eligible for WCCC benefits for a 12-month period if, in addition the:~~

~~(a) Consumer is a Washington state resident;~~

~~(b) Family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; and~~

~~(c) Child or children are residing with a biological parent or guardian~~)); and

(iv) The family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; or

(b) The children's parent or guardian:

(i) Is participating in or is listed as a victim in a case in a specialty or therapeutic court as defined by RCW 2.30.020; and

(ii) Was referred for child care as part of the specialty court or therapeutic court proceedings.

(2) Families eligible for WCCC under this section will:

(a) Have no copayment;

(b) Be authorized for full-time child care regardless of participation in an approved activity; and

(c) Be eligible to have benefits paid only to a provider that meets the requirements in WAC 110-15-0125.

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst. Applicants and consumers:

(1) ((~~Applicants and consumers~~)) Not participating in WorkFirst activities may be eligible for WCCC benefits for the following approved activities:

(a) Employment;

(b) Self-employment;

(c) Supplemental nutrition assistance program employment and training (SNAP E&T); or

(d) The following education programs:

(i) High school or working towards a high school equivalency certificate for consumers under age 22 ((~~years of age~~));

(ii) Part-time enrollment in a:

(A) Vocational education((~~,~~));

(B) Adult basic education (ABE)((~~,~~));

(C) High school equivalency certificate for consumers age 22 ((~~years of age~~)) and older((~~,~~)); or

(D) English as a second language (ESL) program combined with an average of ((~~20~~)):

(I) Twenty or more employment hours per week ((~~or 16~~));

(II) Sixteen or more work-study hours per week; or

(iii) For full-time students of a community, technical, or tribal college, enrollment in:

(A) A vocational education program that leads to a degree or certificate in a specific occupation;

(B) An associate degree program; or

(C) A registered apprenticeship program.

((~~(iv) "Full-time student" for the purpose of this subsection means a consumer attends a community, technical, or tribal college and meets its definition of full-time student.~~

~~(c) Applicants and consumers~~)) (2) Who meet the requirements of ((~~(c) of this~~)) subsection (1)(d) of this section are eligible to receive subsidy payment for up to 10 hours per week of study time for approved classes.

((~~(2) Applicants and consumers~~)) (3) Who are eligible for WCCC benefits under the terms of this section are eligible to receive subsidy payment for:

(a) Transportation time between the child care location and the consumer's place of employment or approved activity; and

(b) Up to eight hours of sleep time before or after a night shift.

AMENDATORY SECTION (Amending WSR 23-12-038, filed 5/30/23, effective 7/1/23)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) ((~~DCYF takes the following steps to~~)) The department determines consumers' eligibility and copayments, when care is provided under a WCCC voucher or contract, by:

(a) ((~~Determine their~~)) Family size as described in WAC 110-15-0015; and

(b) ((~~Determine their~~)) Countable income as described in WAC 110-15-0065.

(2) ((~~DCYF~~)) The department calculates consumers' copayments as follows:

If the household's income is:	Then the household's maximum monthly copayment is:
At or below 20 percent of the SMI	Waived
Above 20 percent and at or below 36 percent of the SMI	$65
Above 36 percent and at or below 50 percent of the SMI	$90
Above 50 percent and at or below 60 percent of the SMI	$165
At reapplication, above 60 percent and at or below 65 percent of the SMI	$215
An applicant between 60 percent and 75 percent of the SMI for families participating in a state-registered apprenticeship	$215

(3) ((~~DCYF~~)) The department does not prorate copayments when consumers use care for only part of a month.

(4) ((~~For parents~~)) The department waives copayments for eligible consumers who are one or more of the following:

(a) Age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate((~~, copayments are not required~~));

(b) Employed by a licensed or certified child care provider as confirmed or verified in the department's electronic workforce registry;

(c) Eligible under:

(i) WAC 110-15-0023; or

(ii) WAC 110-15-0024.

WSR 24-14-140
PROPOSED RULES
DEPARTMENT OF HEALTH
(Pharmacy Quality Assurance Commission)
[Filed July 3, 2024, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-21-010.

Title of Rule and Other Identifying Information: Dialysate and dialysis device manufacturers and wholesalers in home dialysis programs. The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-090, 246-945-091, 246-945-092, and 246-945-093 to include manufacturers and wholesalers of dialysis devices and approved legend drugs, including dialysate, in-home dialysis program rules under the commission's jurisdiction. The proposed amendments are in response to statutory changes made by SHB 1675 (chapter 23, Laws of 2022).

Hearing Location(s): On August 22, 2024, at 9:30 a.m., at the Department of Labor and Industries, Room S117/118, 7273 Linderson Way S.W., Tumwater, WA 98501; virtually via Zoom # 871 4349 5001. Please download and import the following iCalendar (.ics) fields to your calendar system https://us02web.zoom.us/webinar/tZwvcu-orjooGdL0ucE3WWkJLsRorLzko_bx/ics?icsToken=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCtPf. Topic: PQAC business meeting 2024. To access the meeting on August 22, 2024, at 9 a.m., go to https://us02web.zoom.us/j/87143495001 and use the Webinar ID 871 4349 5001. The access options include One-tap mobile: US +12532158782,,86114958466# or +16699009128,,86114958466#; or phone dial (for higher quality, dial a number based on your current location): US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799; Webinar ID 861 1495 8466. International numbers available https://us02web.zoom.us/u/kdLNo6unOZ. The commission will hold a hybrid hearing. Attendees are welcome to attend either in person at the physical location or virtual via Zoom.

Date of Intended Adoption: August 22, 2024.

Submit Written Comments to: Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview/, fax 360-236-2901, beginning the date and time of this filing, by August 8, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Julia Katz, phone 360-502-505 [5058], fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by August 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to allow manufacturers and wholesalers to sell, deliver, possess, and dispense prescribed approved legend drugs, including commercially available dialysate, and dialysis devices directly to home dialysis patients. RCW 16.64.257 and 69.41.032, amended by SHB 1675, direct the commission to adopt rules to implement the statutes.

Reasons Supporting Proposal: The amended rules are needed to implement SHB 1675, which amended RCW 18.64.257 and 69.41.032 to ensure manufacturers and wholesalers may distribute approved legend drugs and dialysis devices directly to dialysis patients and granted the commission authority to adopt rules. Additionally, the proposed rules establish important quality assurance measures for wholesalers and manufac-

turers dispensing approved legend drugs and dialysis devices directly to home dialysis patients.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.257, and 69.41.032.

Statute Being Implemented: RCW 18.64.257 and 69.41.032.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Julia Katz, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, email PharmacyRules@doh.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The costs of the proposed rule ($1,669) are **less than** the minor cost threshold ($10,305.83).

The minor cost analysis demonstrated that the estimated cost to manufacturers and wholesalers choosing to dispense approved legend drugs and dialysis devices to patient homes is $1,669. Using the Governor's Office for Regulatory Innovation and Assistance's Minor Cost Threshold Calculator with NAICS Code Title, 424210 Drugs and Druggists' Sundries Merchant Wholesalers, the minor cost threshold is not met per RCW 19.85.020. A full small business economic impact statement (SBEIS) may not be required since the minor cost threshold is not met. Excerpts of an SBEIS are provided herein.

The following is a brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The commission is proposing this rule to regulate participating manufacturers and wholesalers who dispense lawfully prescribed dialysis devices and approved legend drugs, including commercially available dialysate, to homes of patients undergoing kidney dialysis treatment at home. The proposed rule protects and promotes public health and safety by implementing safeguards and quality assurance measures for patients receiving dialysis devices and approved legend drugs from manufacturers and wholesalers.

The proposed rule began with the passage of SHB 1675 during the 2022 legislative session. Effective June 9, 2022, SHB 1675 amended RCW 18.64.257 and 69.41.032 to ensure manufacturers and wholesalers may distribute dialysis devices and approved legend drugs directly to home dialysis patients. The proposed rule is needed because SHB 1675 also directed the commission to adopt rules to implement RCW 18.64.257 and 69.41.032 in state regulation. That is why the commission filed a CR-101 as WSR 23-21-010 on October 5, 2023. On March 7, 2024, the commission voted to approve the filing of the CR-102.

For manufacturers and wholesalers that elect to distribute prescriptions to home dialysis patients, the proposed rule is needed to establish important safeguards and quality assurance measures. The purpose of the safety measures is to hold participating manufacturers and wholesalers to similar quality assurance, shipment and delivery, and risk management standards as facilities that regularly interact with patients (e.g. pharmacy). Participating manufacturers and wholesalers will need to establish an agreement with a pharmacist for consultation on an as needed basis, attach a record of shipment to each practitioner's order, develop quality assurance programs for shipment and delivery, and maintain a record of shipment and delivery errors.

Manufacturers and wholesalers that choose to distribute prescriptions to home dialysis patients must secure and utilize a pharmacist consultant. Distributing manufacturers and wholesalers must also develop and implement protocol for shipments, deliveries, and error documentation. Finally, these manufacturers and wholesalers must also provide quality assurance measures to protect medications from diversion or tampering in line with their own security policies and procedures.

SBEIS Table 1 identifies and summarizes of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

SBEIS Table 1. Summary of Businesses Required to comply to the Proposed Rule

NAICS Code (4, 5, or 6 digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
424210	Drugs and Druggists' Sundries Merchant Wholesalers	121	$10,305.83

The following is an analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.

WAC 246-945-090 Home dialysis programs, manufacturers, and wholesalers—Legend drugs.

Description: The commission is proposing to amend WAC 246-945-090 to allow manufacturers and wholesalers to sell, deliver, possess, or dispense materials used in home dialysis programs directly to patients, provided that the treatment was prescribed by a practitioner acting within the scope of their practice.

Manufacturers and wholesalers will need to apprise staff of the rule adoption and train pertinent staff on the rule adoption's implementation protocol. The content may be supplemental to an existing training session.

Cost(s): $187 Total probable cost per participating manufacturer or wholesaler for 90 minutes of staff time to prepare and deliver training to employees. This probable cost assumes an average health service manufacturer or wholesaler employing 200 employees has a shipping and receiving team of 10 production workers and one manager.[1,2,3] Commission staff estimate that the training will require 60 minutes of the manager's time ($62/hour) to prepare and deliver the training on patient home deliveries and 30 minutes of each production worker's time ($25/hour) to receive the training.[4,5]

WAC 246-945-091 Home dialysis programs, manufacturers, and wholesalers—Pharmacist consultant.

Description: Manufacturers and wholesalers will need to establish an agreement with a pharmacist for consultation on an as needed basis. Pharmacist consultations are needed to deliver and dispense dialysis devices and approved legend drugs safely to patients. The shipment and delivery content of the agreement may be in addition or stand alone to an existing pharmacist consultant agreement.

Cost(s): $426 ongoing probable cost for six hours of a pharmacist's time ($71/hour) for consultation.[6] The commission estimates manufacturers and wholesalers will consult with a contracted pharmacist one hour every other month.

WAC 246-945-092 Home dialysis programs, manufacturers, and wholesalers—Records.

Description: Manufacturers and wholesalers will need to attach a record of shipment to each practitioner's order. The record of shipment needs to include the name of the patient, strengths and quantities of drugs, manufacturers' names, date of shipment, names of people who selected, assembled and packaged the shipment, and the name of the pharmacist or designated person responsible for the shipment.

Cost(s): $300 One-time probable cost for a printer and $304 ongoing probable cost for toner and paper for printing records of shipment.[7] These probable costs are based on commission staff's estimate of 10,000 shipments per manufacturer or wholesaler requiring printed records annually.[8]

WAC 246-945-093 Home dialysis programs, manufacturers, and wholesalers—Quality assurance.

Description: Manufacturers and wholesalers will need to develop quality assurance programs for shipment and delivery and maintain a record of shipment and delivery errors. The shipment and delivery quality assurance plan and error record may be supplemental to an existing quality assurance program.[9]

Cost(s): $328 One-time probable cost for three hours of a production manager's time ($62/hour) and two hours of a pharmacist consultant's time ($71/hour) to fulfill the quality assurance program requirements.[10,11] $124 One-time probable cost for two hours of a production manager's time ($62/hour) will be needed annually to maintain a record of shipment and delivery errors.

Summary of all Cost(s):

SBEIS Table 2. Summary of probable cost(s)

WAC Section and Title	Probable Cost(s)
WAC 246-945-090 Home dialysis programs, manufacturers, and wholesalers—Legend drugs	$187 one-time for employee training
WAC 246-945-091 Home dialysis programs, manufacturers, and wholesalers—Pharmacist consultant	$426 ongoing for pharmacist consultations
WAC 246-945-092 Home dialysis programs, manufacturers, and wholesalers—Records	$300 one-time for a printer for records of shipment $304 ongoing for toner and paper for records of shipment
WAC 246-945-093 Home dialysis programs, manufacturers, and wholesalers—Quality assurance	$328 one-time for quality assurance program development $124 ongoing for quality assurance program improvement
Total	$1,669.00

Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated.

The costs of the proposed rule ($1,669) are **less than** the minor cost threshold ($10,305.83).

Summary of how the costs were calculated: The probable costs were calculated for participating manufacturers and wholesalers to comply with the proposed rule. Probable costs affiliated with compliance primarily pertain to staff time. Average staff wages in Washington state were sourced from data produced by the United States Bureau of Labor and Statistics. Additional resources were used to estimate employee quantities. Commission staff, including a pharmacist consultant, determined the estimated time requirements.

1 What is compliance training, and why is it important? What is compliance training, and why is it important? (powerdms.com). (Accessed March 26, 2024)
2 43.5 percent of manufacturing workers in establishments with 250 or more workers in March 2018. 43.5 percent of manufacturing workers in establishments with 250 or more workers in March 2018 : The Economics Daily: U.S. Bureau of Labor Statistics (bls.gov). (Accessed March 25, 2024)
3 The Ideal Manager to Employee Ratio: How Many Managers Do You Need? The Ideal Manager to Employee Ratio: How Many Managers Do You Need? - Don Romans (Accessed March 25, 2024)
4 Occupational Employment and Wages, May 2023. Transportation, Storage, and Distribution Managers (bls.gov) (Accessed March 25, 2024)
5 Occupational Employment and Wages, May 2023. Production Workers, All Other (bls.gov) (Accessed March 25, 2024)
6 Occupational Employment and Wages, May 2023 - 29-1051 Pharmacists. Pharmacists (bls.gov) (Accessed March 25, 2024)
7 Staples. Staples® Official Online Store (Accessed April 22, 2024)
8 National ESRD Census Data. National ESRD Census Data (esrdnetworks.org) (Accessed April 9, 2024)
9 Manufacturing and Quality Assurance: A Comprehensive Guide. Manufaturing [Manufacturing] Quality Assurance: A Comprehensive Guide (cashflowinventory.com) (Accessed March 25, 2024)
10 See footnote 4
11 See footnote 8

A copy of the detailed cost calculations may be obtained by contacting Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, email PharmacyRules@doh.wa.gov.

July 2, 2024
Hawkins DeFrance, PharmD, Chair
Pharmacy Quality Assurance Commission

OTS-5459.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-090 Home dialysis programs, manufacturers, and wholesalers—Legend drugs. Pursuant to RCW 18.64.257 and 69.41.032, a medicare-approved dialysis center ((~~or~~)), a facility operating a medicare-approved home dialysis program ((~~may~~)), a manufacturer, or a wholesaler who sells, delivers, ((~~possess~~)) possesses, or dispenses directly to its home dialysis patients, in case((~~s~~)) or full shelf ((~~package~~)) lots, if prescribed by a ((~~physician~~)) practitioner, the following legend drugs:

(1) Sterile heparin, 1000 u/mL, in vials;
(2) Sterile potassium chloride, 2 mEq/mL, for injection;
(3) Commercially available dialysate; and
(4) Sterile sodium chloride, 0.9%, for injection in containers of not less than 150 mL.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-091 Home dialysis programs, manufacturers, and wholesalers—Pharmacist consultant. ((~~Home dialysis programs involved~~

~~in the distribution of legend drugs as~~)) A medicare-approved dialysis center, a facility operating a medicare-approved home dialysis program, a manufacturer, or a wholesaler who sells, delivers, possesses, or dispenses dialysis devices and legend drugs directly to its home dialysis patients permitted by RCW 18.64.257 and 69.41.032((~~,~~)) shall have an agreement with a pharmacist which provides for consultation as necessary. This agreement shall include advice on the drug ((~~distribution~~)) shipment and delivery process to home dialysis patients and on the location used for storage and ((~~distribution~~)) shipment of the authorized drugs, which shall be reasonably separated from other activities and shall be secure.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-092 Home dialysis programs, manufacturers, and wholesalers—Records. (1) A medicare-approved dialysis center, a facility operating a medicare-approved home dialysis program, a manufacturer, or a wholesaler who sells, delivers, possesses, or dispenses dialysis devices and legend drugs directly to its home dialysis patients permitted by RCW 18.64.257 and 69.41.032 shall attach a record of shipment ((~~shall be attached~~)) to the ((~~prescriber's~~)) practitioner's order ((~~and~~)). The record of shipment shall include:

(a) The name of the patient;

(b) Strengths and quantities of drugs;

(c) The manufacturers' names;

(d) Date of shipment;

(e) Names of persons who selected, assembled and packaged for shipment; and

(f) The name of the pharmacist or designated individual responsible for the ((~~distribution~~)) shipment.

(2) Prescription and drug ((~~distribution~~)) shipment records shall be maintained in accordance with WAC 246-945-020.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-093 Home dialysis programs, manufacturers, and wholesalers—Quality assurance. ((~~Home dialysis programs involved in the distribution of legend drugs as~~)) A medicare-approved dialysis center, a facility operating a medicare-approved home dialysis program, a manufacturer, or a wholesaler who sells, delivers, possesses, or dispenses dialysis devices and legend drugs directly to its home dialysis patients permitted by RCW 18.64.257 and 69.41.032((~~,~~)) shall develop a quality assurance program for drug ((~~distribution~~)) shipment and delivery, and shall maintain records of drug ((~~distribution~~)) shipment and delivery errors and other problems, including loss due to damage or theft.

WSR 24-14-145
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed July 3, 2024, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-041.

Title of Rule and Other Identifying Information: Chapter 182-140 WAC, Mobile rapid response crisis team endorsement standards.

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXClK3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA has developed a new chapter to establish standards for issuing endorsements to mobile rapid response crisis teams and community-based crisis teams, as required by RCW 71.24.903. The rules:

- Define the eligible organizations that may seek an endorsement to receive enhanced rates and supplemental performance payments.
- Establish the endorsement application and renewal process, documentation, and on-site review required for eligible organizations and exempt community-based crisis teams.
- Establish a process for tribal eligible organizations to seek endorsement.
- Establish staffing, training, transportation, equipment, and other standards required for eligible organizations.
- Describe how HCA directs the issuance of performance payments.
- Establish procedures for notices of noncompliance that may result in application denial, endorsement suspension, or endorsement revocation, and establish a process to correct noncompliance.

Reasons Supporting Proposal: RCW 71.24.903 directs HCA to establish standards for issuing endorsements, including procedures for the denial, suspension, or revocation of an endorsement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 71.24.903.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 71.24.903.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Demetria Hawkins, P.O. Box 42730, Olympia, WA 98504-2730, 360-725-9984.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

July 3, 2024
Wendy Barcus
Rules Coordinator

OTS-5476.4

Chapter 182-140 WAC
MOBILE RAPID RESPONSE CRISIS TEAM ENDORSEMENT STANDARDS

NEW SECTION

WAC 182-140-0010 General. (1) This chapter establishes standards for issuing endorsements to mobile rapid response crisis teams (MRRCTs) and community-based crisis teams (CBCTs) according to RCW 71.24.903 and the authority's best practice guide. MRRCTs and CBCTs provide on-site interventions for people experiencing behavioral health emergencies.

(2) Eligible MRRCTs and CBCTs may receive an endorsement from the authority that allows a team under contract with a behavioral health administrative services organization to receive enhanced rates and supplemental performance payments.

(3) Tribal governments may seek an endorsement using the attestation process described in WAC 182-140-0060.

NEW SECTION

WAC 182-140-0020 Definitions. The following definitions apply to this chapter:

"Authority" means the Washington state health care authority.

"Behavioral health administrative services organization (BH-ASO)" means the same as in WAC 182-538-050.

"Behavioral health emergency" means a person is experiencing a significant behavioral health crisis that requires an immediate in-person response due to level of risk or lack of means for safety planning.

"Calendar days" means all days, including Saturdays, Sundays, and designated holidays under WAC 357-31-005.

"Community-based crisis team (CBCT)" means a team that is part of an emergency medical services agency, a fire service agency, a public health agency, a medical facility, a nonprofit crisis response provider, or a city or county government entity, other than a law enforcement agency, that provides the on-site, community-based interventions of a mobile rapid response crisis team (MRRCT) for people who are experiencing behavioral health emergencies.

"Eligible organization" means an entity serving as a mobile rapid response crisis team (MRRCT) or a community-based crisis team (CBCT) that is seeking an endorsement. An eligible organization must be one of the following:

- Any entity below operated by a tribal government;
- City or county government entity, other than a law enforcement agency;
- Emergency medical service agency;
- Fire department;
- Fire service agency;
- Licensed or certified behavioral health agency;
- Medical facility;
- Nonprofit crisis response provider;
- Nonprofit organization;
- Public health agency.

"Endorsed team" means a mobile rapid response crisis team (MRRCT) or a community-based crisis team (CBCT) that meets the endorsements standards in this chapter.

"Endorsement" or **"certificate of endorsement"** means a voluntary credential issued by the authority to a mobile rapid response crisis team (MRRCT) or a community-based crisis team (CBCT), which allows the team to become eligible for supplemental performance payments.

"Enhanced rate" means the increased rate paid to endorsed mobile rapid response crisis teams (MRRCT) and community-based crisis teams (CBCT) as described in RCW 71.24.903.

"Exempt community-based crisis team" means a team comprised solely of an emergency medical services agency, whether part of a fire service agency or a private entity, located in a rural county in eastern Washington with a population of less than 60,000 residents. Under RCW 71.24.903, minimum personnel standards do not apply in exempt eastern Washington counties.

"Exempt eastern Washington counties" means the following counties: Adams, Asotin, Columbia, Douglas, Ferry, Garfield, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Stevens, and Whitman.

"Mental health care provider (MHCP)" means a provider recognized by the department of health as a registered, agency affiliated counselor who has primary responsibility for implementing an individualized plan for mental health rehabilitation services.

"Mental health professional (MHP)" means the same as in WAC 182-538D-0200.

"Mobile rapid response crisis team (MRRCT)" means a team that provides professional, on-site, community-based interventions such as outreach, de-escalation, stabilization, resource connection, and follow-up support for people who are experiencing a behavioral health emergency. A MRRCT must:

- Include certified peer counselors as a best practice to the extent practical based on workforce availability; and

• Meet standards for response times established by the authority's contracted BH-ASO.

"Regional dispatch protocols" means the protocols adopted by the regional BH-ASO to establish guidelines for dispatching necessary crisis services.

"Rural area" means a zip code with a population of less than 500 residents per square mile, an Indian reservation, and any location that requires travel by ferry or international travel to reach.

"Suburban area" means a zip code with a population of more than 500 residents per square mile but less than 3,000 residents per square mile.

"Supplemental performance payment" means an optional, additional payment described in RCW 71.24.903(10) that is greater than the enhanced rate. Endorsed teams are eligible for the supplemental performance payment if they demonstrate that they meet the required standards in this chapter.

"Urban area" means a zip code with a population of more than 3,000 residents per square mile.

NEW SECTION

WAC 182-140-0030 Application process. (1) **Application.** To apply for an endorsement, an eligible organization must submit an application for endorsement to the authority and all documentation required in subsection (3) of this section. Eligible organizations may apply:

(a) Online through the authority's website; or

(b) By completing the Crisis Team Endorsement Application form (HCA 82-0588) and mailing it to the authority.

(2) **Submission periods for applications.**

(a) A team must submit its completed application by January 1st to be eligible for a contract effective in July of the same year.

(b) A team must submit its completed application by July 1st to be eligible for a contract effective in January of the following year.

(c) The authority defers submissions received after the deadlines in (a) and (b) of this subsection until the next contract cycle.

(3) **Required documentation.** An eligible organization applying for an endorsement must also submit:

(a) A current contract with the behavioral health administrative services organization (BH-ASO) serving the region where the eligible organization will operate or a letter of intent to contract once the team is endorsed;

(b) The eligible organization's policies and procedures that outline how it will comply or how it currently complies with the training requirements in WAC 182-140-0090;

(c) A copy of the transportation plan outlined in WAC 182-140-0100; and

(d) A copy of the eligible organization's staffing plan described in WAC 182-140-0080.

(4) **Community-based crisis teams (CBCT).** A CBCT that intends to contract with a licensed and certified behavioral health agency (BHA) to provide staff must also submit:

(a) The contracting BHA's active contract with the BH-ASO located in the region where the CBCT will operate; or

(b) A letter of intent from the BH-ASO to establish a contractual relationship with the contracting BHA upon the CBCT receiving an endorsement.

NEW SECTION

WAC 182-140-0040 Application requirements for exempt community-based crisis teams. A community-based crisis team (CBCT) exempt from minimum personnel standards must submit the application described in WAC 182-140-0030(1) and:

(1) Policies and procedures that outline how the exempt CBCT will comply with the training requirements in WAC 182-140-0090;

(2) A memorandum of understanding with a licensed behavioral health agency (BHA) certified to provide crisis services and direct, real-time consultation through a behavioral health provider while the team is responding to a crisis call;

(3) A copy of the BHA's active contract with the behavioral health administrative services organization (BH-ASO) located in the region where the exempt CBCT will operate;

(4) A written plan describing how the responders will access the required real-time consultation with the behavioral health clinicians, which includes:

(a) The equipment to be used; and

(b) How the consultation will be documented and by which party.

(5) A staffing plan that identifies:

(a) How the exempt CBCT will be staffed 24 hours per day, seven days a week, with an outline of when each position is available to respond; and

(b) Policies and procedures that describe how staff will respond safely and meet the time requirements in the regional dispatch protocols.

(6) Policies and procedures to ensure follow-up crisis services are provided after an initial response or a copy of a memorandum of understanding with a mobile rapid response crisis team (MRRCT) to provide follow-up crisis services. The memorandum of understanding must:

(a) Be with an MRRCT that is licensed and certified to provide crisis services that are clinically appropriate; and

(b) Contain clear guidelines on how and when the transfer of care will occur and the expectation to follow up within a defined set of time.

NEW SECTION

WAC 182-140-0050 Endorsement renewal. Endorsed teams seeking renewal must submit the application and all current documentation described in WAC 182-140-0030.

(1) An endorsed team must submit its renewal application and current documentation every three years. For a contract cycle from:

(a) January 1st through June 30th, the endorsed team's submission is due by July 1st of the previous year.

(b) July 1st through December 31st, the endorsed team's submission is due by January 1st of the current year.

(2) Failure to timely complete this requirement may result in suspension or revocation of the team's endorsement and denial of any enhanced rates or supplemental payments.

NEW SECTION

WAC 182-140-0060 Tribal endorsement process. (1) Tribal eligible organizations may seek endorsement through the government-to-government process described in this section.

(2) Under this process, a tribal eligible organization must submit:

(a) The endorsement application and materials described in WAC 182-140-0030, as applicable;

(b) A Tribal Endorsement Attestation form (HCA 82-0599), confirming the organization meets the state minimum standards for mobile crisis services as described in WAC 182-140-0080, 182-140-0090, and 182-140-0100;

(c) A copy of its policies and procedures for the endorsement standards identified in (b) of this subsection; and

(d) Photographs showing that the organization's vehicle or vehicles meet the requirements of WAC 182-140-0100 (2), (3), and (4).

(3) After all materials are submitted, the authority and the tribal eligible organization meet to review and finalize all application materials and discuss any technical assistance needed.

(4) Following review and acceptance of the application and related materials, the authority issues the tribal eligible organization a certificate of endorsement and:

(a) Notifies all behavioral health administrative services organizations; and

(b) Negotiates an Indian Nation Agreement (INA) with the tribe that outlines:

(i) Government-to-government monitoring; and

(ii) Denial, suspension, and revocation procedures under the terms of the parties' negotiated INA.

(5) The provisions of WAC 182-140-0120 and 182-140-0130 do not apply to tribal eligible organizations.

NEW SECTION

WAC 182-140-0070 On-site review process. Eligible organizations must successfully complete and pass an on-site review.

(1) **On-site review.** The authority schedules the on-site review after it receives and approves all documentation required for an endorsement as described in this chapter. The on-site review examines the following:

(a) Employee files;

(b) Training materials and trainer qualifications;

(c) Any vehicle operated by an eligible organization; and

(d) Records of training certificates, if required, and driver licenses for all personnel who operate the vehicle.

(2) **Completion of on-site review.** After completing its on-site review, the authority sends the eligible organization a notice for any items that do not meet endorsement standards.

(a) The eligible organization has 30 calendar days from the date of the notice to resolve any items that do not meet endorsement standards.

(b) If the eligible organization has not resolved all outstanding issues within 30 days, the authority may deny the application.

(3) **Issuance of endorsement.** The authority issues a certificate of endorsement after it has reviewed and approved all required documentation and the eligible organization has satisfactorily completed its on-site review. Once endorsed, the eligible organization receives the enhanced rate.

(4) **Tribal exemption.** Tribal eligible organizations seeking endorsement through the process described in WAC 182-140-0060 are exempt from the on-site review.

NEW SECTION

WAC 182-140-0080 Staffing standards. To be endorsed, eligible organizations must meet the staffing standards described in this section.

(1) **Staffing plan.** An eligible organization must have a staffing plan that includes:

(a) How an eligible organization will be staffed 24 hours a day, seven days a week, including when each position is available to respond and where the teams are located;

(b) How peers will be incorporated into the response team;

(c) How peers will be recruited and any anticipated challenges for them;

(d) Policies and procedures for how staff will respond safely and meet the time requirements in the regional dispatch protocols; and

(e) Policies and procedures for ensuring follow-up crisis services occur after an initial response.

(2) **Additional staffing documentation for community-based crisis teams (CBCT).** A CBCT that contracts with a licensed and certified behavioral health agency to meet the staffing requirements described in WAC 182-140-0090 must have a staffing plan that includes:

(a) Which staff are involved in the agreement;

(b) The role of each staff member;

(c) How staff will access clinical supervision 24 hours a day, seven days a week, for real-time consultation; and

(d) How frequently clinical supervisors will provide ongoing coaching, case consultation, and clinical debriefing in a trauma informed manner, including how to:

(i) Review charts; and

(ii) Provide clinical quality assurance.

(3) **Mobile rapid response crisis teams and nonexempt CBCTs.** Eligible organizations that are not seeking the personnel exemption in RCW 71.24.903(3) must have sufficient staffing to ensure an in-person response is available 24 hours a day, seven days a week, and must:

(a) Meet the required response times described in RCW 71.24.903;

(b) Provide all outreach in pairs unless it is not clinically appropriate;

(c) Provide follow-up services as clinically appropriate to a person seeking behavioral health assistance and connect the person to ongoing support; and

(d) Be composed of the following behavioral health clinical staff who are appropriately credentialed or licensed within their scope of practice and meet the criteria below:

(i) A mental health professional (MHP);

(ii) A mental health care provider (MHCP);

(iii) A certified peer counselor who meets the criteria in WAC 182-115-0100; or

(iv) Another behavioral health or medical professional working within their scope of practice under an approved staffing plan, as needed, to meet staffing requirements; and

(v) Include at least one MHP or MCHP during an initial response and a certified peer counselor, when available.

(e) Have an MHP supervise when the responding team staff are in the field; and

(f) Have access to an MHP 24 hours a day, seven days a week, for consultation. The consulting MHP may be the team supervisor or another MHP.

NEW SECTION

WAC 182-140-0090 Training standards. An eligible organization's policies and procedures must meet the training standards in this section to receive endorsement. In addition, all staff must receive training sponsored by the authority, behavioral health administrative services organizations, tribes, or eligible organizations, as applicable.

(1) **Required staff training.** All staff must receive the training described in this section, as applicable, before an eligible organization submits its application. Staff hired during or after the application process must complete the training described in this section, following the time requirements in subsections (2) and (3) of this section.

(2) **Training required within 90 days.** All staff must receive the following training within 90 calendar days of their hiring date:

(a) Developmentally appropriate modules for:

(i) Trauma-informed care;

(ii) Harm reduction; and

(iii) Basic de-escalation training.

(b) CPR;

(c) First aid;

(d) Naloxone administration;

(e) Suicide prevention training for health professionals approved by the department of health. Training required for behavioral health clinical staff licensure meets this standard if it is kept up to date; and

(f) Confidentiality standards established in chapters 70.02, 71.34, and 71.05 RCW.

(3) **Training required within 180 days.** All staff must complete the following training within 180 calendar days of their hiring date:

(a) Authority-sponsored certified crisis intervention specialist training;

(b) Regional crisis system training approved by the behavioral health administrative services organization (BH-ASO), as available; and

(c) Authority-approved training on the Indian health care delivery system, including the government-to-government relationship between the state of Washington and federally recognized Indian tribes.

(4) **Exception for tribes.** The authority considers the staff of teams operated by or for a tribe to meet the applicable requirements in subsection (3)(b) and (c) of this section.

(5) **Crisis supervision training for supervisors.** Supervisors must complete authority-sponsored crisis supervision training that includes the following:

(a) Trauma-informed supervision; and

(b) Monitoring for staff burnout.

(6) **Vehicle operation training.** Before operating an eligible organization's vehicle, staff must be trained in the following:

(a) Defensive driving;

(b) Operation of equipment compliant with the Americans with Disabilities Act; and

(c) Any specialized training necessary to operate the vehicle.

(7) **Additional training.** Eligible organizations must also provide any additional training required by the authority.

(8) **Approval of existing training materials.** An eligible organization may apply to have its training materials approved to meet the criteria required in this section. The organization must submit its training materials to the authority for approval as part of the application process described in WAC 182-140-0030.

(9) **Approved trainers.** Trainers must be approved by the authority. An organization may apply to have its own staff become approved trainers when:

(a) The staff member has completed the initial trainer course for specified trainings; and

(b) The organization has reviewed the staff member's credentials to ensure the person is competent to train others about the subject matter.

NEW SECTION

WAC 182-140-0100 Transportation, equipment, and communication standards. An eligible organization must meet the transportation, vehicle, and communication standards in this section to receive an endorsement.

(1) **Transportation plan.** An eligible organization must have a transportation plan.

(a) The plan's policies and procedures must explain how the organization will:

(i) Comply with regional transportation procedures;

(ii) Provide timely transportation when a transport need is identified, as clinically appropriate;

(iii) Ensure safe transport for passengers and staff;

(iv) Ensure all staff who transport passengers are legally qualified to operate the vehicle;

(v) Arrange for alternative transport when the team is unable to provide transportation;

(vi) Ensure that people experiencing mobility disabilities have safe transport to a facility; and

(vii) Document the reasons for an unsuccessful transport and how to address them in the future.

(b) An eligible organization must follow incident reporting guidelines and notify the authority of any critical incidents or accidents that occur during transport. Eligible organizations must use the critical incident reporting system.

(2) **Vehicle requirements.** An eligible organization must have access to an adequate number of vehicles to respond to and transport people experiencing significant behavioral health emergencies to a location that will provide the appropriate level of crisis stabilization services.

(a) Vehicles must:

(i) Be owned or leased by the eligible organization;

(ii) Have proper licensing and registration;

(iii) Be maintained in good working order; and

(iv) Meet all safety requirements.

An automotive service excellence (ASE) certified mechanic must complete a certificate of safety to demonstrate that the vehicle has passed a uniform vehicle safety inspection before the authority issues an endorsement or renewal. If there is concern that a vehicle does not meet all safety requirements after receiving an ASE certification, the authority or the behavioral health administrative services organization (BH-ASO) may require another formal inspection by a qualified professional.

(v) Have vehicle insurance coverage that applies to private, nonprofit transportation providers and meets the minimum limits of WAC 480-31-070;

(vi) Have 24 hour, seven days a week access to vehicles that meet the Americans with Disabilities Act (ADA) requirements for transporting a person experiencing mobility disabilities or be a licensed ambulance or aid vehicle as described in chapter 18.73 RCW.

(b) If an eligible team does not have a vehicle that meets the requirements of (a)(vi) of this subsection, the team must have policies and procedures on how it will transport someone experiencing mobility disabilities.

(3) **Equipment.** All equipment must be maintained in good working order and requires a formal inspection by a qualified professional when requested by the authority or the contracted behavioral health administrative services organization (BH-ASO).

(a) **Vehicle equipment.** Vehicles operated by eligible organizations must have:

(i) The appropriate equipment to ensure the person being transported is unable to interfere with the driver's safe operation of the vehicle;

(ii) Doors and windows that can be secured by the driver;

(iii) Appropriate seat belts for the safety of staff and the person being transported, including child safety seats or booster seats as necessary;

(iv) Appropriate or necessary equipment to respond to weather conditions and roadside emergencies; and

(v) The ability to track the location of the vehicle and team.

(b) **Communication equipment.** All vehicles must be equipped with communication equipment that is in good working order.

(i) Equipment must allow for:

(A) Direct two-way communication between the team and its dispatch control point; and

(B) Communication with emergency services.

(ii) All teams must be equipped to access electronic health records (EHR) and referral records through a remote means, where coverage is available, and be able to print records when needed; and

(iii) All equipment must be compatible with authority-designated technology platforms.

(4) **Other equipment.** Eligible organizations must carry Naloxone.

NEW SECTION

WAC 182-140-0110 Endorsed team supplemental performance payment. (1) Only endorsed teams that respond to behavioral health emergencies and meet the response times described in RCW 71.24.903 for rural, suburban, and urban areas are eligible to receive a supplemental performance payment.

(2) Teams must follow behavioral health administrative services organization (BH-ASO) data reporting requirements to document their response times.

(3) The authority calculates response times based on the reported information on a quarterly basis.

(4) The authority certifies a team that has met performance requirements and directs the BH-ASO to issue the performance payment.

NEW SECTION

WAC 182-140-0120 Notice of noncompliance. (1) **Denial of application.** The authority sends a notice of noncompliance that may result in the denial of an eligible organization's initial application or the denial of an endorsed team's renewal application if the eligible organization or endorsed team:

(a) Fails to meet the applicable endorsement standards described in WAC 182-140-0080, 182-140-0090, and 182-140-0100;

(b) Fails to cooperate or disrupts the authority's representatives during an on-site review or during a behavioral health administrative services organization's (BH-ASO) complaint investigation under its contract with the endorsed team;

(c) Knowingly, or with reason to know, makes a false statement of fact or fails to submit required information;

(d) Holds itself out as endorsed when the authority has denied or revoked the organization's endorsement, or the organization has surrendered its endorsement;

(e) Fails to timely provide satisfactory application materials;

(f) Fails to comply with any other requirement for endorsement described in this chapter; or

(g) Fails to meet the terms of its contract with the BH-ASO.

(2) **Endorsement suspension.** The authority sends an endorsed team a notice of noncompliance that may result in an endorsement suspension if the endorsed team fails to:

(a) Submit renewal materials prior to the closing of the application period;

(b) Schedule or timely complete the on-site review;

(c) Meet the endorsement standards outlined in WAC 182-140-0080, 182-140-0090, and 182-140-0100;

(d) Provide the services for which the eligible organization is endorsed; or

(e) Follow the terms of their BH-ASO contract.

(3) **Exception for tribal organizations.** Subsections (1) and (2) of this section and WAC 182-140-0130 do not apply to tribal eligible organizations or tribal endorsed organizations. Tribal organizations follow the process laid out in the organization's Indian Nation Agreement described in WAC 182-140-0060 regarding any noncompliance with the endorsement standards in this chapter.

NEW SECTION

WAC 182-140-0130 Correction of noncompliance. If an eligible organization or endorsed team receives a notice of noncompliance, the organization or team may demonstrate compliance as follows:

(1) **Correction of application.** For notices of noncompliance for an eligible organization's application:

(a) An eligible organization has 30 calendar days from the date of the notice of noncompliance to submit proof of all corrected deficiencies.

(b) The authority reviews the supplemental information and responds to the eligible organization within 30 calendar days of receipt.

(c) If the organization or team fails to timely submit proof of the corrected deficiency, the authority denies the application.

(2) **Correction of endorsement standards.** An endorsed team has 30 calendar days from the date of the notice of noncompliance to submit proof of all corrected deficiencies.

(a) An endorsed team must submit:

(i) Documentation proving compliance with standards; or

(ii) A plan to be approved by the authority to correct noncompliant compliance procedures within 90 calendar days of the notice of noncompliance, or both.

(b) The endorsed team must provide the authority with evidence of the correction within 90 calendar days of the notice of noncompliance.

(c) The authority reviews the evidence of the correction and, within 30 calendar days of receipt, determines whether the team is compliant.

(d) If the authority's evaluation confirms the endorsed team has satisfied the requirements for compliance, the authority provides written notice confirming the team's compliance.

(e) If an endorsed team fails to satisfy the requirements for compliance within the 30-day period, the authority issues a 90-calendar-day suspension notice. A suspended team is not eligible for supplemental performance payments during its suspension, and the suspension may impact the team's priority response status within the regional dispatch protocols.

(f) If an endorsed team fails to satisfy the requirements for compliance within the suspension period, the authority issues a notice of revocation of endorsement.

(3) **Endorsement revocation.** The authority sends an eligible organization a notice of noncompliance that may result in an endorsement revocation if the eligible organization fails to:

(a) Timely renew its endorsement every three years; or

(b) Remedy the cause of a suspended endorsement.

(4) **Surrender of endorsement.** An endorsed team may surrender its endorsement at any time. A team that surrenders its endorsement may continue to operate, but is no longer eligible to receive enhanced payments or supplemental performance payments.

WSR 24-14-148
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 3, 2024, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-087.

Title of Rule and Other Identifying Information: New WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Hearing Location(s): On August 8, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Barbara Imperio at BarbaraI@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: August 12, 2024.

Submit Written Comments to: Perry Stern, P.O. Box 47453, Olympia, WA 98504-7453, email PerryS@dor.wa.gov, fax 360-534-1606, by August 9, 2024.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New WAC 458-20-18201: The purpose of this rule-making effort is to provide information about the qualifying criteria, application, and documentation requirements for the retail sales and use tax exemptions provided in RCW 82.08.820 and 82.12.820, respectively.

Reasons Supporting Proposal: WAC 458-20-18201: This rule will provide information on filing and application requirements.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300.

Statute Being Implemented: RCW 82.04.280, 82.08.820, and 82.12.820.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Perry Stern, 6400 Linderson Way S.W., Tumwater, WA, 360-524-1588; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-531-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is not a significant legislative rule as defined by RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on taxpayers as it does not propose any requirements not already provided for in the statute. The proposed rule does not impose new fees, filing requirements, or recordkeeping guidelines that are not already established in the statute.

July 3, 2024
Brenton Madison
Rules Coordinator

OTS-5212.1

NEW SECTION

WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Part 1. General.

(101) **Introduction.** Wholesalers or third-party warehousers that own or operate qualifying warehouses or grain elevators, and retailers who own or operate qualifying distribution centers, may be eligible for a limited sales/use tax exemption on qualifying construction costs and qualifying purchases of material-handling and racking equipment. The exemption is in the form of a remittance. See RCW 82.08.820 and 82.12.820. This rule provides details on the qualifying criteria for the exemption.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Construction"** means the actual construction of a warehouse or grain elevator that did not exist before the construction began. Construction also includes expansion, if the expansion adds at least 200,000 square feet of additional space to an existing warehouse or additional storage capacity of at least 1,000,000,000 bushels to an existing grain elevator. Construction does not include renovation, remodeling, or repair. Activities not involving actual construction do not fall within the definition of construction. For example, costs related to housing, meals, trailers, permit fees, insurance, bonds, dumpsters, etc., are not construction costs. Similarly, "actual" construction generally does not include activities in the preparation of building a warehouse or grain elevator. Thus, except for design and engineering activities, activities occurring prior to the issuance of a building permit do not constitute construction.

(b) **"Distribution center"** means a warehouse used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer, i.e., to physical locations owned or operated by the retailer at which retail sales occur. Distribution center does not include any warehouse at which retail sales occur, and distribution centers are not used to fulfill retail orders directly to customers. RCW 82.08.820.

(c) **"Finished goods"** means tangible personal property intended for sale by a retailer or wholesaler. Finished goods do not include any of the following:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product;

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Cannabis, useable cannabis, or cannabis-infused products. RCW 82.08.820.

(d) **"Grain elevator"** means a structure used for storage and handling of grain in bulk. RCW 82.08.820. The term "structure" as it relates to a grain elevator is not limited to a single building or edifice of a single foundation or footprint.

(e) **"Material-handling equipment and racking equipment"** means equipment in a warehouse or grain elevator used primarily (more than

50 percent of the time) to handle, store, organize, convey, package, or repackage finished goods. RCW 82.08.820. The term includes tangible personal property with a useful life of at least one year that becomes an ingredient or component part of the equipment, including repair and replacement parts. See subsection 203(a) of this rule for additional information about the types of costs related to material handling and racking equipment that do and do not qualify for this exemption.

(f) **"Material-handling equipment"** means equipment that physically moves tangible personal property and equipment used in the process of moving tangible personal property. The term generally includes, but is not limited to, the following:

(i) Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots;

(ii) Mechanized systems, including containers that are an integral part of the system, the purpose of which is to lift or move tangible personal property;

(iii) Automated handling, storage, and retrieval systems, including computers that control them, the purpose of which is to lift or move tangible personal property;

(iv) Forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets; and

(v) Equipment used to organize and track products, such as handheld scanners and stand-alone scales used to organize goods by weight. In contrast, stand-alone scales used to weigh goods to determine postage are not material-handling equipment.

(g) **"Qualifying activity"** means the storage by a wholesaler of finished goods for wholesaling purposes, the storage by a third-party warehouser of another person's finished goods, or the storage by a retailer of its finished goods for the purpose of distributing the goods to retail outlets of the retailer.

(h) **"Racking equipment"** means equipment used to physically store tangible personal property. The term generally includes conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system. Examples of racking equipment include stand-alone tables, when the tables are used during packaging or storing finished goods; drawers, when used to handle, store, or organize finished goods; and refrigeration systems that are a necessary part of the storage system for finished goods that must be stored in a refrigerated state. Dock doors and dock levelers are not racking equipment.

(i) **"Third-party warehouser"** means a person taxable under the B&O tax classification in RCW 82.04.280 (1)(d) for persons operating cold storage warehouses or storage warehouses. RCW 82.08.820.

(j) **"Warehouse"** means a single enclosed building or structure in which finished goods are stored. RCW 82.08.820. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse, as are loading docks and other such space attached to the building and used for handling of finished goods. A guard shack or any external building is not considered part of the warehouse. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is any building in which manufacturing takes place.

Part 2. Remittance Eligibility.

(201) **Qualifying owner/operator.** The remittance is available only to the following types of businesses:

(a) A wholesaler that owns or operates a warehouse or a grain elevator;

(b) A third-party warehouser that owns or operates a warehouse or a grain elevator; or

(c) A retailer that owns or operates a distribution center.

(202) **Effect of nonqualifying activities.**

(a) **Distribution centers.** A distribution center may qualify for the exemption only if the retailer that operates the distribution center uses it solely for a qualifying activity. For example, a retailer that operates its distribution center for its own retail outlets and also fulfills retail orders directly to consumers does not qualify for the exemption because the distribution center is not used exclusively for the qualifying activity of storing and distributing finished goods to the retailer's retail outlets.

(b) **Warehouses.**

(i) A single warehouse accommodating multiple business activities may qualify for the exemption if none of the activities is excluded by statute and at least one of the activities carried on at the warehouse is a qualifying activity, provided that at least 200,000 square feet of the warehouse is dedicated to the qualifying activity.

(ii) A warehouse that accommodates both qualifying and nonqualifying activities must be able to demonstrate that it meets the 200,000 square feet requirement in order to receive the exemption. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are included within the 200,000 square feet warehouse space measure. The department determines eligibility under this section based on information provided by the taxpayer and through audit and other administrative records.

Examples.

(A) **Example 1.** Company A operates a 250,000 square foot warehouse that it uses to store goods of third parties. Company A also fulfills retail orders directly to its retail customers. Company A designates 200,000 square feet of the warehouse exclusively to its third-party warehousing activity, i.e., storing goods of third parties. The other 50,000 square feet of Company A's warehouse has separately stored goods, and Company A exclusively uses those goods (not the goods in the other 200,000 square feet) to fulfill Company A's retail sales. Company A's warehouse may qualify for the exemption because 200,000 square feet of its warehouse space is dedicated for use solely as a third-party warehouse, which is a qualifying activity, and retail order fulfillment is not a prohibited use of warehouses under RCW 82.08.820.

(B) **Example 2.** Company B operates a 500,000 square foot warehouse that it uses to store and distribute finished goods from the warehouse to its retail outlets. Company B also uses the warehouse to fulfill orders directly to its retail customers. Company B dedicates 300,000 square feet of the warehouse to storing the goods to be distributed to its retail outlets, and the remaining 200,000 square feet is segregated and dedicated exclusively to fulfillment of retail orders. Company B's warehouse is a distribution center; retail fulfillment is a disqualifying activity if it occurs in a retail distribution center. See subsection (102)(b) of this rule. Therefore, Company B's distribution center does not qualify for the exemption.

(C) **Example 3.** Company C operates a 500,000 square foot warehouse that it uses to store finished goods for wholesale. Company C also

uses the warehouse to fulfill orders directly to its retail customers. The wholesale goods and the products for fulfilling retail orders are intermingled throughout the warehouse. Company B's warehouse does not qualify for the exemption because it does not dedicate 200,000 square feet of the warehouse's physical space exclusively to the wholesaling activity, the qualifying activity.

(203) **Payment of sales/use tax required.** The remittance is available only to an eligible business that has paid sales tax levied under RCW 82.08.020, or use tax levied under RCW 82.12.020, for the following types of costs:

(a) Material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment. For example, costs of renting material-handling and racking equipment, without an operator, qualifies for the remittance if the equipment is primarily used to handle, store, organize, convey, package, or repackage finished goods. However, the cost of renting equipment used to install material-handling and racking equipment does not qualify because the charge for the rental equipment is not a charge for labor or services and the equipment used in installation is not itself material-handling and racking equipment. Costs for maintaining material-handling and racking equipment do not qualify for the exemption.

(b) Materials incorporated in the construction of a warehouse or grain elevator, and labor and services given in respect to that construction. Thus, construction costs may include flooring, walls, HVAC, roofing, and windows. Labor costs for pouring a foundation and installing a roof for a warehouse or grain elevator also may qualify as construction costs. However, costs for soil testing, soil amendments, excavation, and earth moving activities performed before the excavation of a foundation are not qualifying construction costs.

(204) **Remittance amount.** The amount of the remittance or credit available to an eligible person is based on the state share of sales tax paid or state share of use tax paid (or both, see RCW 82.08.020 for the state sales and use tax rate), computed as follows:

(a) For grain elevators with bushel capacity of at least 1,000,000 but less than 2,000,000, the remittance is equal to 50 percent of the amount of state sales or use tax paid for:

(i) Qualifying materials incorporated as an ingredient or component of the grain elevator, and labor and services rendered in respect to the grain elevator's construction; and

(ii) Qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) For grain elevators with bushel capacity of 2,000,000 or more, and for warehouses and distribution centers with at least 200,000 square feet of space dedicated exclusively to a qualifying activity, the remittance is equal to:

(i) 100 percent of the amount of state sales and use tax paid for qualifying materials incorporated as an ingredient or component of the structure, and labor and services rendered in respect to the structure's construction; and

(ii) 50 percent of the amount of state sales and use tax paid for qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

Part 3. Application for Tax Remittance.

(301) **General application information.** The department determines eligibility for the exemption remittance in this section based on information provided by the buyer and through audit and other administrative records.

(a) An application and required documentation for a tax exemption remittance must be submitted quarterly.

(b) The department will send the approved exempted amount to the business by the end of the calendar quarter following the quarter the application was submitted.

(c) While not required, applicants are encouraged to submit the application and applicable documentation electronically through the MyDOR portal.

(302) **Documentation needed to verify eligibility.** Applicants must provide a completed Warehouse Tax Incentive Remittance application that corresponds to their qualifying activity. In addition to a completed application, supporting documentation is also required.

(a) Required documentation will depend on the applicant's qualifying activity and may include, but is not limited to, the following:

(i) Blueprints identifying the building location and the size of the facility;

(ii) Building permits associated with the foundation and the structure;

(iii) Proof of invoice and sales tax payments (copies of checks, bank statements for ACH payments, certification of use/deferred sales tax paid);

(iv) Completed electronic spreadsheet detailing purchase invoices and payments;

(v) For lessors, a copy of the lease agreement stating that the economic benefit of the remittance is passed to the tenant in the form of reduced rent; and

(vi) Any other items requested by the department to substantiate the applicant's claim for the remittance.

(b) Applicants are encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must provide sufficient substantiation to support the claim for remittance before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within 90 days after the notice is sent, unless the documentation is under the control of a third party not affiliated with or under the control of the taxpayer. If the documentation is under the control of an unaffiliated third party, the taxpayer will have 180 days to provide the documentation.

WSR 24-14-149
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Order 23-14—Filed July 3, 2024, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-092.

Title of Rule and Other Identifying Information: WAC 220-500-041 Construction, creation and maintenance of roads, trails, and structures.

Hearing Location(s): On August 15, 2024, at 10:00 a.m., via Zoom https://us06web.zoom.us/j/88387520816; or One-tap mobile +12532050468,,88387520816# US, +12532158782,,88387520816# US (Tacoma). The public can provide comments during webinars by phone or electronic device. Attendees that provide verbal comments are audio only. To testify, you must register by 8 a.m., August 14, 2024, https://forms.office.com/pages/responsepage.aspx?id=F-LQEU4mCkCLoFfcwSfXLSrgNExZzOBBrIzn0zLRUfZURDBVT1ZIUVVWNk9NWURVN1pHODNYWjZTVy4u&web=1&wdLOR=cC663E017-9806-4FEB-8D43-2CACC029A5FA. At the appropriate time to speak, you will be recognized by your partial phone number, or your Zoom user name and staff will unmute your connection. You will be asked to state your name and residence for the record, just as if you were attending the meeting in person. Please also state whether you are representing yourself, or a group or organization.

Date of Intended Adoption: On or after August 16, 2024.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email Constructionrule2024@publicinput.com, fax 360-902-2162, https://publicinput.com/constructionrule2024, comment by phone 855-925-2801, project code 8413, SEPA comments https://publicinput.com/2024constructionsepa or email 2024constructionsepa@publicinput.com, by August 15, 2024.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, http://wdfw.wa.gov/accessibility/requests-accommodation, by August 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule will help the Washington department of fish and wildlife (WDFW) better manage its wildlife areas and the public use that is occurring on them. It will give WDFW law enforcement remedies to discourage the construction, creation, and maintenance of roads, trails, and structures without WDFW approval, which can otherwise pose a threat to natural or cultural resources and create safety hazards for public users.

Reasons Supporting Proposal: The construction, creation, and maintenance of roads, trails, and structures that have been user-created without approval or authorization from WDFW staff are often in locations or conditions that are environmentally, culturally, or financially unsustainable. A proliferation of unauthorized roads and trails has appeared in recent years on lands managed by WDFW. These roads and trails often cut through sensitive habitat, interrupt habitat connectivity, and cause direct damage to vegetation, wildlife, and tribal resources. User-created roads and trails lack the deliberate planning, design and evaluation of impacts on the land that are necessary to place or build them appropriately. Currently, without the legal remedies or statutory authority to prevent or cite individuals for the creation of roads, trails, and structures without approval, there

is a risk that these activities will continue to proliferate and degrade sensitive resources.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210, and 77.15.040.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210, and 77.15.040.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

July 3, 2024
Scott Bird
Rules Coordinator

OTS-4951.6

NEW SECTION

WAC 220-500-041 Construction, creation and maintenance of roads, trails, and structures. (1) A person must obtain the express written permission of the department in order to construct, create, modify, repair, relocate, or maintain a new or existing road, trail, sign, structure, or other facility or improvement. A copy of the written permission must be kept on site during any work.

(2) Violating this section is a misdemeanor pursuant to RCW 77.15.230.

(3) This section does not apply to erecting and using temporary camp and blind structures pursuant to WAC 220-500-130.

WSR 24-14-150
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Order 24-08—Filed July 3, 2024, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-107 on May 1, 2024

Title of Rule and Other Identifying Information: WAC 220-450-230 Beaver relocation permits—Requirements and restrictions.

Hearing Location(s): On August 9-10, 2024, at 8:00 a.m., at the Natural Resources Building, Room 175, 1111 Washington Street S.E., Olympia, WA 98504. Information on how to register to testify at the public hearing is available at http://wdfw.wa.gov/about/commission.meetings, or contact the commission office at 360-902-2267.

Date of Intended Adoption: On or after September 27, 2024.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email 2024beavercr102@publicinput.com, fax 360-902-2162, https://publicinput.com/2024beavercr102, comment by phone 855-925-2801, project code 7085, SEPA email 2024beaversepa@publicinput.com, by August 9, 2024.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, http://wdfw.wa.gov/accessibility/requests-accommodation, by August 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington department of fish and wildlife (WDFW) proposes to create a new section in chapter 220-450 WAC, Wildlife in captivity and wildlife rehabilitation. WDFW's purpose for this proposed rule is to create a permit program allowing individuals to offer relocation as an alternative to lethal removal of conflict beaver.

The beaver relocation permit program has existed as a pilot program since 2019. The program offers an alternative to lethal removal of conflict beavers and provides education and support for individuals and nonprofits as they perform relocations around the state. It is a requirement of the program that only conflict beavers can be relocated and only after all coexistence options have been exhausted.

Since its inception, the program has successfully relocated over 80 beavers with the collaboration of WDFW wildlife services, certified wildlife control operators, and permitted licensed trappers.

This new section will codify the aspects of the pilot program we have found successful, such as:

- Specify the requirements for permittees and subpermittees, including qualifications, training, husbandry facilities, and reporting.
- Identify which beavers are candidates for relocation, which must be conflict-causing and have exhausted all methods of coexistence.
- Specify the requirements for release sites, which must be assessed for a combination of abiotic and biotic factors to determine the suitability of the site in addition to the factors listed in RCW 77.32.585 and with the agreement of the landowner.
- Specify the conditions during temporary captivity, including duration, avoiding disease transmission, preventing habituation and

imprinting, and outline the steps to take when a beaver shows illness, injury, or mortality.

- Identify the conditions under which a permit may be revoked, modified or suspended and the steps taken by the permittee, sub-permittee, and the agency.

RCW 77.32.585 is a significant legislative rule permitting WDFW to release wild beavers. This section will create the permitting program to oversee the individuals performing these relocations.

Reasons Supporting Proposal: This new section will build from the existing beaver relocation permit pilot program to a permanent status allowing the program to have enforceable rules. RCW 77.32.585 required that WDFW permit the release of wild beavers under certain conditions and introduced guidelines for allowing relocation. The proposed rule incorporates aspects of the pilot program to establish a permitting process for overseeing and regulating beaver relocation through enforceable rules.

Individuals relocating wildlife is an unlawful practice, but this section will now allow the permit program to continue training and supporting permittees. The proposed rule would establish conditions and requirements related to the beaver relocation permits, as well as processes for administering the program. This section will also outline the requirements for beaver release sites to encourage release site fidelity and prevent future conflict events with the beaver in question. The new rule will also identify penalties for not following WDFW's requirements on relocating beaver.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.15.005, 77.15.075, and 77.32.585.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.15.005, 77.15.075, and 77.32.585.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328 (5)[(a)](i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

A copy of the detailed cost calculations may be obtained by contacting Scott Bird, Agency Rules Coordinator, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-995-2442, email rule.coordinator@dfw.wa.gov.

July 3, 2024
Scott Bird

Rules Coordinator

OTS-5028.1

NEW SECTION

WAC 220-450-230 Beaver relocation permits—Requirements and restrictions.

Purpose

(1) Wildlife is property of the state, and as such it is unlawful to keep wildlife captive, feed wildlife, or relocate wildlife without expressed permission from the Washington department of fish and wildlife. The purpose of the beaver relocation permit is to grant the permission for citizens to perform relocation of wild American beaver (*Castor canadensis*) while establishing criteria to:

(a) Reduce lethal removal of beaver by allowing permittees to relocate conflict beaver;

(b) Ensure humane care and treatment is provided to beaver during the process of trapping, temporary captivity, and relocation; and

(c) Select release sites which maximize relocation success by providing suitable habitat for beaver with minimal likelihood for future human-beaver conflict as described in RCW 77.32.585.

Definitions

(2) For the purpose of this section, the following terms apply:

(a) "Beaver husbandry facility" means the authorized site(s), as shown on the beaver relocation permit, for the temporary holding of beaver involved in relocation.

(b) "Beaver relocation permit" means a permit issued by WDFW to allow the relocation of beaver.

(c) "Euthanasia" means compassionate killing with minimal pain and distress, in a timely manner, and safely to prevent disease transmission, public health or human safety risks, or prolonged or unrelenting animal suffering due to illness, injury, or unremitting pain as outlined in WAC 220-450-180.

(d) "Habitat suitability" means a combination of abiotic and biotic factors used to assess the likelihood of beavers occupying and thriving in a site.

(e) "Humane care" means providing care such as water, food, safe handling, clean facilities, medical treatment, and euthanasia if needed, and conditions including environments sensitive to species-typical biology and behavior, with the intent to minimize fear, pain, stress, and suffering.

(f) "Permittee" means the person listed on the beaver relocation permit who applies for and receives a beaver relocation permit and is responsible for monitoring and approving the relocation activities conducted under the permit.

(g) "Release site" means a location in a stream where beavers will be relocated to. The site is assessed by a permittee using the criteria and methods discussed in the required training, is not in proximity of ungulate grazing territory, is not in proximity to buildings or infrastructure which may impart damage from beaver activity,

does not currently show beaver occupation, and is analyzed for the factors listed in RCW 77.32.585.

(h) "Subpermittee" means a person listed on the permittee's beaver relocation permit who may assist the permittee with specified aspects of beaver relocation activities limited by the criteria in this section.

Application requirements and general criteria

(3) Applicants must meet all the following criteria to be issued a beaver relocation permit:

(a) Must be at least 18 years of age;

(b) Must not have within the last three years:

(i) More than one finding of "paid" or "committed," as final disposition, for an infraction under chapter 77.15 RCW; or

(ii) A conviction for a fish and wildlife crime under chapter 77.15 RCW.

(c) Must complete and submit a beaver relocation application online to the department's beaver relocation manager any time after March 1st for a permit of the same year.

(d) Must operate or have access to a beaver husbandry facility that meets minimum requirements outlined in the Beaver Relocation Handbook.

(e) Must submit a beaver relocation plan that describes the intent of relocations, area of work, and methods for identifying source beaver, capture, handling, transport, release site selection, release, and monitoring following release site factors listed in RCW 77.32.585.

(f) Must submit a statement of qualifications and relevant experience.

(g) Must demonstrate willingness and ability to comply with all requirements of the permit.

(h) Must complete a comprehensive training on beaver relocation in Washington as identified by the department within the past three years.

(4) The department may refuse a permit if the applicant submits an incomplete application or does not meet any of the requirements in this section.

(5) Permits will be valid within the dates listed on the permit and no more than one year after the application is approved.

(6) The permittee and subpermittees must provide all beavers with humane care during capture, transport, holding, and release.

(7) The permit does not authorize the permittee or any subpermittees to practice veterinary medicine.

(8) Permittees and subpermittees are responsible for abiding by all permit terms and conditions, reporting and record requirements, and compliance with state and federal regulations when conducting beaver relocation or actions associated with beaver relocation.

(9) Beaver acquired and held by a permittee, including deceased animals and parts, remain the property of the state and will not be offered for sale, sold, traded, or bartered.

(10) Beaver acquired and held by a permittee for the purposes of relocation must not be exported out of state or imported into Washington. A violation of this section is punishable under RCW 77.15.290 Unlawful transportation of fish or wildlife—Penalty.

(11) The permittee and any subpermittees must carry a digital or paper copy of the current year's beaver relocation permit while trapping, transporting, releasing, or holding beaver.

(12) Only beaver which cause human-wildlife conflict including, but not limited to, damage to private or public property or infrastructure, may be relocated. The human-wildlife conflict must be verified by the permittee. Mitigation of such conflict must be discussed with the landowner before trapping for relocation.

(13) Additional staff or volunteers may assist in the capture, transport, and relocation of beaver but only with the direct in-person supervision of the permittee.

(14) An annual report using the department's designated report form is required by the date listed on the permit so that information can be included on the department's website per RCW 77.36.160.

(15) Permittees assume all responsibility for the action of subpermittees listed on their annual permit. Subpermittees must be supervised by permittees and the permittee may assign subpermittee duties under their current year's permit for the following activities: Transport of beaver to or from the husbandry facility, feeding of beaver while in captivity, observation of beaver while in captivity, intake or prerelease measurements of beaver, and/or completion and submission of required reports.

(16) Proposed subpermittees must meet the requirements of subsection (3)(a), (b), and (f) of this section.

(17) The following subpermittees are authorized to also conduct the following activities under a valid, current year's permit depending on their current, valid certifications and licenses:

(a) A wildlife control operator (WCO) listed as a subpermittee may capture and transport beaver to an approved beaver husbandry facility or to a release site unsupervised. They may only trap beaver within the regulations of their WCO certification and may charge a fee for capturing beaver pursuant to WAC 220-440-110. Wildlife control officers listed as subpermittees cannot release beaver or select release sites without the permittee being present.

(b) A WDFW trapping license holder listed as a subpermittee may capture and transport beaver to an approved beaver husbandry facility or to a release site unsupervised. WDFW trapping license holders cannot release beaver or select release sites without the permittee being present. Participation as subpermittee does not authorize licensed trappers to harvest beaver outside of the trapping license season.

(18) Permittees or subpermittees listed on a beaver relocation permit may not trap commercially or recreationally for beaver within two miles in any direction from any site where beaver were released under a permit for two years after the release date.

(19) The permittee is responsible for performing the habitat suitability assessment per the WDFW-approved site assessment form, selecting the site for release, and ensuring that post-release monitoring is conducted by appropriately trained personnel. A subpermittee may not select sites for beaver release or release beaver without supervision by the permittee.

Beaver capture

(20) Captured beaver must be checked for lactation at the trap site. Any lactating beaver should be brought to the beaver husbandry facility while an attempt is made to capture the kits so the family group may be relocated together. If a captured beaver is lactating, it must be noted in the annual report.

(21) The permit does not authorize the use of body-gripping traps (as defined in RCW 77.15.192). A special trapping permit is required for the use of body-gripping traps (WAC 220-417-040).

Beaver housing and caretaking - Generally applicable provisions

(22) A permittee must operate or have access to at least one beaver husbandry facility that meets the minimum requirements outlined in the permit. This facility is subject to inspection by WDFW staff each permit year.

(23) The permittee and subpermittees may not house beaver at a site different than the facility(ies) indicated on their permit except in an emergency situation requiring veterinary care. Documentation of such events must be submitted to WDFW within seven days of the advent of the emergency.

(24) The normal interval for holding beaver captive before release will be less than 14 days, but permittees may hold beaver for longer if they notify the WDFW program coordinator by the 14-day mark and receive approval from the department's beaver relocation manager (or their designee).

(25) A permittee must keep beaver which are the same sex and from different family groups separate to prevent beaver-beaver conflict.

(26) The permittee will ensure that beaver held at a beaver husbandry facility prior to relocation shall have minimal contact with humans and domestic animals to prevent habituation and/or disease transmission. Domestic animals should not be allowed at the husbandry facility. If this is unavoidable, domestic animals should be fully vaccinated and should have no direct contact with, nor direct exposure to, wildlife.

(27) The permittee will ensure that beaver housed in a beaver husbandry facility are observed daily for disease or injury and will maintain a daily log of observations. This log will be submitted to WDFW with the annual report. If disease or injury of a captive beaver is suspected, the permittee must contact a WDFW wildlife veterinarian. No beaver may be relocated that appears sick or injured without approval from a WDFW wildlife veterinarian.

(28) In cases where a captive beaver is suffering and humane euthanasia is necessary, but the permittee is unable to reach a WDFW wildlife veterinarian, the permittee may contact a local veterinarian to perform humane euthanasia. Euthanasia must be provided in accordance with an animal's welfare, using humane techniques and at a reasonable time after admission to prevent unnecessary suffering of the animal. Permittees must follow the most current American Veterinary Medical Association Guidelines on Euthanasia.

(29) The permittee must report any beaver illness or death within 24 hours to a WDFW wildlife veterinarian and the WDFW permit program coordinator and abide by the following criteria:

(a) Any beaver which has expired from or is suspected of expiring from the zoonotic diseases such as tularemia, leptospirosis, yersiniosis, or giardia must be submitted for necropsy per a WDFW wildlife veterinarian's instructions.

(b) In the case of a beaver expiring from any cause besides disease, the permittee is encouraged to donate the carcass to a permitted museum, research institution, or tribal organization; a WDFW transfer authorization must accompany any transfer of a beaver carcass unless the institution is permitted to receive specimens. Otherwise, the permittee or subpermittee will dispose of deceased beaver through lawful burial, incineration, or a licensed rendering facility (WAC 220-440-090).

(30) The permit authorizes the use of commonly used ear tags and passive integrated transponder (PIT) tags. Nonpermanent, superficial marks such as nontoxic paint or tape may be used as appropriate for

distinguishing individuals in temporary captivity. The permit does not authorize the application of other devices (such as VHF transmitters).

Beaver release

(31) Permittee is responsible for selecting the release site and is required to select sites which meet the following criteria:

(a) Show no current sign of beaver occupancy within 2,000 feet both up and downstream of the site;

(b) Show no culverts, buildings, or infrastructure which may be impacted by flooding or beaver structures within 2,000 feet both up and downstream of the site;

(c) Does not show sign of heavy livestock or native ungulate presence within 2,000 feet both up and downstream of the site;

(d) Have been assessed for habitat suitability criteria listed in RCW 77.32.585; and

(e) Does not violate movement of beavers across the division of Eastern and Western Washington as defined in WAC 220-450-150.

(32) The permit does not authorize trespass or the relocation of beaver to any site without the express permission of the property owner, land manager, or their designee.

(33) The permittee must conduct a site evaluation of the property to receive beaver(s) and assess habitat suitability following WDFW protocols prior to capture, handling, and holding of beaver. The permittee or subpermittee may not capture beaver before securing a release site for that animal.

(34) The permittee must receive a signed Landowner Attestation Form from the release site landowner, land manager, or their designee before any beaver may be captured for release on the property which includes an agreement to gain approval from neighboring property owners within one mile downstream of the release site. The permittee must submit a copy of each signed Landowner Attestation Form to WDFW as part of their annual report. A formal agreement with a government or tribal land management agency is acceptable in lieu of a Landowner Attestation Form for releases on public or tribal land.

(35) Permittees and subpermittees may not be held liable for property damage caused by beaver released using a beaver relocation permit per RCW 77.32.585.

(36) A violation of this section by a person who engages in wildlife relocation without a department permit is punishable under RCW 77.15.190, 77.15.430, or other applicable sections of the RCW and WAC, depending on the circumstances of the violation.

(37) A violation of this section by a person who has a beaver relocation permit is punishable under RCW 77.15.750(1).

Permit modification, suspension, or revocation

(38) The department may modify, suspend, or revoke a beaver relocation permit if the primary permittee or a subpermittee violates any department rule related to beaver relocation, wildlife possession, wildlife rehabilitation, wildlife trafficking, or permit conditions. Violations include, but are not limited to, mal-imprinting, which is the over-habituation to where animals lose fear of humans and predators, or taming wildlife in relation to humans or domestic animals at the beaver relocation facility. In addition, the department may modify, suspend, or revoke a beaver relocation permit if a permittee or a subpermittee, within the last 10 years, was convicted of any offense involving animal or child cruelty, neglect, abuse, or found guilty practicing veterinary medicine without an active license as determined by the veterinary board of governors.

(39) A primary permittee who is in violation of permit conditions or department beaver relocation rules, or whose subpermittee is in violation of permit conditions or department beaver relocation rules shall, in this order:

(a) Receive written warning(s) outlining remedies and a deadline of not less than seven days to come into compliance after which time the department may impose permit modification to remedy those violations such as restriction of permitted counties or increased frequency of beaver husbandry facility inspections.

(b) If the permittee is noncompliant after 14 days, the permit will be suspended. A permit will only be reinstated again if the permittee successfully implements a corrective action plan within the compliance deadline.

(c) A primary permittee will have the permit revoked if written warnings, permit modifications, compliance plan remedies, and permit suspension processes with concurrent inspections do not result in permittee compliance. Nothing in this section prevents the department from acting immediately to remove animals or suspend or revoke beaver relocation permits in case of documented animal cruelty or adverse animal welfare.

(40) The department's revocation, modification, or suspension of a beaver relocation permit under this section does not preclude the department from referring a matter for potential criminal prosecution against the primary permittee, subpermittee, or both.

(41) Permittees whose beaver relocation permit is revoked may reapply for a new permit three years after the date of revocation. Upon application, the department will consider previous beaver relocation permit performance and the nature of the previous noncompliance or violations when determining whether to issue a new permit. The department will deny an application if the basis for revocation has not been or is not likely to be resolved.

(42) Any permittee whose beaver relocation permit is revoked, modified, or suspended under this section may request an administrative hearing to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW.

WSR 24-14-151
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Order 23-18—Filed July 3, 2024, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-01-142 on December 20, 2023.

Title of Rule and Other Identifying Information: WAC 220-417-010 Trapping seasons and regulations.

Hearing Location(s): On August 9-10, 2024, at 8:00 a.m., at the Natural Resources Building, Room 175, 1111 Washington Street S.E., Olympia, WA 98504. Information on how to register to testify at the public hearing is available at http://wdfw.wa.gov/about/commission.meetings, or contact the commission office at 360-902-2267.

Date of Intended Adoption: On or after September 27, 2024.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email 2024trappingcr102@publicinput.com, fax 360-902-2162, https://publicinput.com/2024trappingcr102, phone 855-925-2801, code 7087, beginning July 3, 2024, by August 9, 2024 by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, http://wdfw.wa.gov/accessibility/requests-accommodation, by August 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule would amend WAC 220-417-010 Trapping seasons and regulations, to restrict trapping of red fox. The proposed change would close fox trapping within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National Forests to prevent accidental take of state endangered Cascade red fox.

Reasons Supporting Proposal: The state endangered Cascade red fox (*Vulpes vulpes cascadensis*) is at risk of being captured via recreational trapping activities within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National Forests where they overlap with the regular species of red fox (*V. vulpes*) which is not state or federally listed. Therefore, closing red fox trapping in these areas will prevent accidental take of the state endangered Cascade red fox.

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

Statute Being Implemented: RCW 77.04.012, 77.04.055, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

July 3, 2024
Scott Bird
Rules Coordinator

OTS-5496.2

AMENDATORY SECTION (Amending WSR 21-14-022, filed 6/28/21, effective 7/29/21)

WAC 220-417-010 Trapping seasons and regulations. (1) Statewide trapping seasons:

SPECIES	SEASON DATES	RESTRICTIONS
Badger, Beaver, Bobcat, Mink, Muskrat, Raccoon, ((~~Red Fox,~~)) River Otter, and Weasel	Nov. 1 - Mar. 31 during the current license year	
Marten	Nov. 1 - Mar. 31 during the current license year	CLOSED in Clallam, Jefferson, Mason, and Gray's Harbor counties.
Red Fox	Nov. 1 - Mar. 31 during the current license year	CLOSED within the exterior boundaries of Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National Forests.

(2) Participation requirements:

(a) A valid Washington state trapper's license is required.

(b) To be issued your first Washington state trapping license an individual must pass the Washington state trapper education exam.

(c) Licensed trappers must comply with reporting requirements in WAC 220-417-020.