

WSR 07-19-038**PERMANENT RULES****WHATCOM COMMUNITY COLLEGE**

[Filed September 13, 2007, 7:38 a.m., effective October 14, 2007]

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

Purpose: To amend sections of Title 132U WAC: WAC 132U-120-020, add definition of dean of instruction; WAC 132U-120-110, change term lengths and requirements of student rights and responsibilities committee; WAC 132U-120-270 and 132U-120-285, add dismissal from a selective admissions program as a result of academic evaluations; and WAC 132U-300-010 and 132U-300-020, amend policies, procedures and definitions for discrimination and/or harassment/intimidation complaints.

Citation of Existing Rules Affected by this Order: Amending x [WAC 132U-120-020, 132U-120-110, 132U-120-270, 132U-120-285, 132U-300-010, and 132U-300-020].

Statutory Authority for Adoption: RCW 28B.50.130, [28B.50.]140, and chapter 49.60 RCW.

Adopted under notice filed as WSR 07-11-155 on May 22, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 12, 2007.

Patricia Onion
Vice-President for
Educational Services

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/11/03 [1/12/03])

WAC 132U-120-020 Definitions. As used in this chapter, the following words and phrases shall be defined as follows:

"Academic dishonesty" shall mean plagiarism, cheating on examinations, fraudulent representation of student work product or other similar acts of dishonesty.

"Alcoholic beverages" shall mean the definition of liquor as contained within RCW 66.04.010(15) as now law or hereafter amended.

"Assembly" shall mean any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

"Associated students" shall mean the student body and such authorized groups organized under the provisions of the constitution and bylaws of the associated students of the college.

"ASWCC" shall mean the associated students of Whatcom Community College as defined in the constitution of that body.

"Board" shall mean the board of trustees of Community College District No. 21, state of Washington.

"Code of conduct" refers to the Whatcom Community College code of student rights and responsibilities.

"College" shall mean Whatcom Community College, and any other community college centers or facilities established within Community College District No. 21.

"College community" shall mean trustees, students, employees, and guests on college-owned or controlled facilities, including distance learning environments.

"College facilities" shall mean and include any and all personal property and real property that the college owns, uses, or controls including all buildings and appurtenances affixed thereon or attached thereto district-wide. College facilities extend to affiliated websites, distance learning classroom environments, and agencies or institutions that have educational agreements with Whatcom Community College.

"College official" shall mean any person who is employed by the college or authorized to act as an agent of the college in performing assigned administrative or professional responsibilities.

"Controlled substance" shall mean and include any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

"Dean of students" shall mean the chief student affairs officer who is the administrator responsible for student services or designee.

"Dean of instruction" shall mean the chief officer who is the administrator responsible for instruction or designee.

"Demonstrations" shall mean any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or group of persons.

"Director of student programs" shall mean the administrator responsible for student programs and activities or designee.

"Disciplinary sanctions" shall mean and include a warning, reprimand, probation, suspension, or dismissal of any student by a dean, or designee, or the president issued pursuant to this chapter where that student has violated any designated rule or regulation of the rules of conduct for which a student is subject to disciplinary action.

"Distance learning" shall mean various methods of instructional delivery that include, but are not limited to, online courses, telecourses, and interactive video courses.

"Faculty" or "instructor" shall mean any full-time or part-time academic employee of the college or an affiliated institution whose assignment is one of a combination of instruction, counseling or library services.

"Free speech area" shall be designated by the college president and can be reserved by student groups and organizations through the office of student programs and activities.

"Instructional day" shall mean any regularly scheduled day of instruction designated in the academic year calendar, including summer quarter, as a day when classes are held. Saturdays and Sundays are not regularly scheduled instructional days.

"President" shall mean the president of Whatcom Community College and president of Community College District No. 21, state of Washington.

"Rules of conduct" shall mean those rules contained within this chapter as now exist or which may be hereafter amended, the violation of which subjects a student to disciplinary action.

"Student," unless otherwise qualified, shall mean and include any person who is enrolled for classes at the college, including any person enrolled in distance learning courses.

"Student rights and responsibilities committee" shall mean the judicial body provided in this chapter.

"Trespass" shall mean the definition of trespass as contained within chapter 9A.52 RCW, as now law or hereafter amended.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/11/03 [1/12/03])

WAC 132U-120-110 Structure of the student rights and responsibilities committee. (1) The student rights and responsibilities committee shall be composed of a chairperson and four members. For the appeal of disciplinary sanctions, the chairperson shall be the dean (~~(for)~~ of instruction, or designee, and the members shall be chosen as follows:

(a) Two students in good academic standing appointed by the ASWCC president; (~~for a one-year term;~~) and

(b) One faculty member appointed by the president of the college (~~for a three-year term~~); and

(c) One administrator appointed by the president (~~for a two-year term~~);

(d) Members of the student rights and responsibilities committee shall be (~~chosen by no later than October 30 of each academic year~~) selected as needed when a written appeal has met the required conditions.

(~~(e) Student rights and responsibilities committee members shall serve during their term of office as set forth above and until their successors are appointed or elected.~~)

(2) If any member of the student rights and responsibilities committee is unable to consider a particular disciplinary proceeding for any reason (including but not limited to conflict of interest, matters of conscience or related reasons), such members shall abstain from considering the issues. If the chairperson abstains for any of the above reasons, the president shall appoint a temporary chairperson who will preside over the committee.

(3) A quorum for all proceedings of the student rights and responsibilities committee shall consist of a chairperson and at least three members; provided, that one student, one faculty member and one administrator are present.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/11/03 [1/12/03])

WAC 132U-120-270 Complaints excluded. (1) Students may not use this procedure for filing a complaint based on the outcome of summary suspension or other disciplinary proceedings.

(2) Federal and state laws, rules, and regulations, in addition to policies, regulations and procedures adopted by the college or the board of trustees, and/or the state board for community and technical colleges are not grievable matters.

(3) Different procedures are required for complaints regarding sexual harassment or illegal discrimination. These procedures are available from the dean for educational services and the personnel director.

(4) Dismissal from a selective entry program as a result of academic evaluations. This entails an alternative procedure. This procedure is available from the Office of Instruction.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/11/03 [1/12/03])

WAC 132U-120-285 Time limits. (1) The student must file a complaint within **one academic quarter** after the action that gives rise to the complaint. For this purpose, fall quarter is considered to be the academic quarter following both spring and summer quarters. The appropriate dean may modify the time limit due to exceptional circumstances such as extended illness.

(2) Every effort will be made by the appropriate dean to investigate and resolve the complaint as soon as possible. When the instructor or staff member concerned is unavailable during a quarter break, sabbatical leave, or other extenuating circumstances, the dean will outline for the student a timeline for the process.

(3) When the instructor or staff member concerned is no longer employed by the college and does not expect to return, the appropriate dean shall confer with appropriate parties and make a decision.

(a) **Step 1 informal resolution.**

(i) Students who believe a college faculty or staff member has unfairly treated them shall first discuss their concerns directly with that person. If the complaint involves a grade, the student should first discuss the grade, including the reason the student believes the grade has been awarded improperly or in an arbitrary or capricious manner, with the course instructor. The purpose of this discussion should be to clarify the perceived problem and request specific action. **Most misunderstandings related to grades can be resolved at this level.**

(ii) If the complaint is not resolved or if the student is apprehensive about talking directly with the staff or faculty member involved, the student may request an appointment with the department chair or appropriate associate dean/dean.

The department chair, supervisor, or associate dean/dean may act as a mediator to resolve the complaint in a prompt and fair manner.

(b) Step 2 formal letter.

(i) In the unlikely event that an informal resolution is not achieved, the student may initiate a formal complaint by writing a **letter to the faculty or staff member and the appropriate dean** within one academic quarter after the incident that gave rise to the complaint. The formal complaint letter must include a:

- Description of the situation including dates and times;
- Summary of the actions taken by the student to resolve the complaint up to that point; and
- Proposed solution.

In a grade dispute, the student should submit specific information on performance scores, attendance, and any syllabus or written material on course grading criteria that the instructor provided to the student.

(ii) The dean shall attempt to resolve the problem by:

(A) Serving as an intermediary between the student and the faculty or staff member and bringing about a resolution that is satisfactory to all concerned; or

(B) Reviewing the facts of the situation and making a decision. The dean shall investigate the student's written complaint. The investigation may include a written response from the instructor including the course syllabus, the grade reported for the student, the evaluation criteria for the course, and the performance scores and attendance data achieved by the student in that course.

(iii) The dean shall conclude this step with a written decision that is mailed to the student's last known address.

(c) Step 3 appeal to the student rights and responsibilities committee.

(i) If the complaint is not satisfactorily resolved in Step 2, the student may request a hearing to be conducted by the student rights and responsibilities committee by submitting a written request to the dean within ten instructional days of the postmark on the written decision of the dean. The written appeal by the student must clearly state errors in fact or matters in extenuation or mitigation that justify the appeal.

(ii) If the student asks a representative to assist during the hearing, the student shall submit in writing along with the hearing request, the name, address, and telephone number of the representative. The instructor or staff member may also have a representative assist during the hearing and must provide contact information to the chairperson.

(iii) All written documents concerning the complaint shall be forwarded to the chairperson of the student rights and responsibilities committee by the dean upon receiving the student's hearing request. Copies of these documents shall be made available to the committee members, the student, and the faculty or staff member to whom the complaint is directed three instructional days prior to the hearing.

(iv) The student rights and responsibilities committee shall be composed of a chairperson and four members. For a student complaint formal appeal, the chairperson shall be the dean who did not handle the initial formal complaint and the members shall be selected as follows:

(A) Two students in good academic standing appointed by the ASWCC president (~~for a one-year term~~);

(B) One faculty member appointed by the president of the college (~~for a three-year term~~);

(C) One administrator appointed by the president of the college (~~for a two-year term~~);

(D) Members of the committee shall be selected (~~no later than October 30 of each academic year~~;) as needed when a written appeal has met the required conditions.

(E) An appropriate substitute member shall be appointed if a member of the hearing committee is unable to consider the formal complaint for any reason (including, but not limited to, conflict of interest, matters of conscience, or related reasons);

(F) A quorum shall consist of a chairperson and at least three members; provided, that one student, one faculty member, and one administrator are present.

(v) The hearing before the committee shall be conducted within twenty instructional days of receiving the written appeal. Notice of the hearing date and time shall be given to all parties involved five instructional days prior to the hearing.

(vi) A student-initiated complaint hearing shall be an informal and closed hearing. The administrative assistant to the chairperson shall electronically record the hearing and take written notes.

(vii) Both the student and the instructor shall be invited to present oral arguments that shall be restricted to issues related to the complaint. Members of the committee may question both the student and instructor.

(viii) At the conclusion of the hearing, the committee shall deliberate and:

- Request additional information to be considered at a future hearing;
- Recommend that the dean's decision be upheld; or
- Find that there are sufficient reasons to modify or overrule the dean's decision and recommend alternatives to the president.

(ix) Within five instructional days after concluding the hearing, the committee shall make a written recommendation to the president.

(x) The president, after reviewing the record of the case prepared by the chairperson of the student rights and responsibilities committee and any appeal statement filed by any party to the grievance, shall issue either a written acceptance of the recommendations of the committee or written directions regarding alternative courses of action. The written findings of the president are final.

(xi) All written statements and testimony considered during the complaint process and a copy of the final decision by the president shall be retained on file by the chairperson of the student rights and responsibilities committee for one year following the complaint.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

COMPLAINTS ((GRIEVANCES))—DISCRIMINATION

- 132U-300-010 Statement of P((p))olicy: Complaints - Discrimination And/Or Harassment/Intimidation
- 132U-300-020 ((Grievance)) Complaint ((p))rocedure—((Sexual harassment, sex discrimination, handicapped discrimination)) Discrimination And/Or Harassment/Intimidation.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88)

WAC 132U-300-010 Statement of P((p))olicy: Complaints—Discrimination And/Or Harassment/Intimidation. (1) Whatcom Community College is covered by Title IX of the Education Amendments of 1972 prohibiting ((sex)) gender discrimination in education and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of ((handicap)) disability. It is the policy of Whatcom Community College to ensure equal opportunity without regard to ((sex)) gender or ((handicap)) disability status in all areas of admission, education, application for employment, and employment. Whatcom Community College's Policy 4010, Affirmative Action/Fair Employment Practices, expands the College's obligation to include no discrimination on the basis of race, color, national origin, gender, disability, sexual orientation, religion, age (except when gender or age is a bona fide occupational qualification) or veteran status which includes Vietnam Era and/or disabled veterans in its programs, recruitments, hiring, training, retention, promotion and all other personnel actions of qualified persons. The Washington Law Against Discrimination (WLAD) RCW 49.60; Chapter 2.60.00 in the SBCTC's (State Board for Community and Technical College) Policy Manual, ADA, Title VI and VII of the Civil Rights Act of 1964, ESHB 2661 and all law and regulations affecting state employees, shall apply to employees at Whatcom Community College.

(a) It is ((also)) the policy of Whatcom Community College to provide an environment in which members of the college community can work or study free from ((sexual)) harassment or ((sexual)) intimidation. ((Sexual harassment)) Harassment/Intimidation is a form of ((sex)) discrimination. As such ((#)) harassment/intimidation is a violation of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.

(b) Discrimination and/or harassment/intimidation directed to any individual or group on the basis of race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited, is a violation of the mission and purpose of Whatcom Community College as an institution of higher education and shall not be tolerated, and, pursuant to board policy and this procedure, shall be prohibited.

((Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when))

((1) Submission to the conduct is either explicitly or implicitly made a term or condition of an individual's academic or career advancement; and/or

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual; and/or

(3) Such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.))

A complaint ((grievance)) procedure is required by Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973.

(2) Definitions

(a) Prohibited Discrimination: Prohibited discrimination is an action taken on the basis of an individual's membership in, association with or presumption of membership or association with the following: race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, such action resulting in a tangible loss in any area of admission, education, programs, hiring, training, retention, promotion and all other personnel actions of qualified persons.

(b) Prohibited Harassment and/or Intimidation: Prohibited harassment and/or intimidation shall include, but will not be limited to verbal and written comments, slurs, jokes, innuendoes, cartoons, pranks and any and all other physical or non-physical conduct or activity that can be construed as derogatory, intimidating, hostile or offensive and which is directed at the victim because of his/her membership in, association with or presumption of membership or association with the following: race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability, political affiliation and veteran status; or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited. Discrimination and/or harassment/intimidation actions are herein defined as unwelcome sexual advances, requests for sexual favors, or other related verbal or physical conduct when:

(i) Submission to the conduct is either explicitly or implicitly made a term or condition of an individual's academic or career advancement; and/or

(ii) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual; and/or

(iii) Such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.

(c) Board Policy: Board policy is based on the principle that all forms of discrimination and/or harassment/intimidation are unacceptable and will be dealt with promptly and effectively. The purpose of the development of a procedure is to establish the methods by which Whatcom Community College will show reasonable care in the prevention of harassment and discrimination. This may include, but will not be limited to the following:

(i) Have in place an effective discrimination and harassment prevention procedure that supports Board policy;

(ii) Offer and communicate existence of flexible, accessible, and non-intimidating complaint procedures;

(iii) Protect confidentiality to the extent possible under the law;

Develop an investigative protocol aimed at prompt fact gathering without bias or subjectivity;

(iv) Provide a disciplinary mechanism that is reasonably calculated to end harassing or discriminatory behavior and correct inappropriate behavior;

(v) Provide mandatory training programs on harassment for supervisors and separate training for non-supervisory employees.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

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

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88, effective 8/8/88)

WAC 132U-300-020 ((Grievance)) Complaint ((p))Procedure—((Sexual harassment, sex discrimination, handicapped discrimination)) Discrimination and/or harassment/intimidation. ((1) Any applicant for admission, enrolled student, applicant for employment or employee of Whatcom Community College who believes he/she has been discriminated against on the basis of sex or on the basis of a handicap may lodge a formal institutional grievance according to the following procedures:

(a) Step 1: Informal meeting. The complainant may request an informal meeting with the individual believed to have committed the discriminatory act in an attempt to informally resolve the concern.

(b) Step 2: Official hearing. If not satisfied by the results of the informal meeting, or if he or she has waived rights to an informal meeting, the complainant may request a meeting with the college designated grievance officer.

(i) The request for an official hearing must be made in writing and must stipulate the specific grievance(s) the complainant wishes to raise.

(ii) Within thirty calendar days of receiving the written request, the college designated grievance officer shall arrange a meeting to hear the complaint. It shall be at the discretion of the complainant to determine whether the officer will meet with the complainant and the person to whom the complaint has been directed separately or in a single meeting. If the complainant requests a single meeting, the meeting shall be attended by the complainant, the person to whom the complaint is directed, and the college officer, who will chair the meeting.

(iii) Following the hearing and within thirty calendar days of receiving the written request, the college officer will report his/her findings in writing to both the complainant and the person to whom the complaint has been directed.

(e) Step 3: Presidential appeal. If the complaint is not resolved as a result of the hearing conducted by the college designated grievance officer, either the complainant or the

person to whom the complaint is directed may request an appeal to the college president.

(i) The request must be made in writing within ten days after receipt of the written results of the official hearing.

(ii) Within fifteen days after receiving the request, the college president or the president's designee will conduct the presidential appeal hearing and report the findings in writing to both the complainant and the person to whom the complaint is directed.

(iii) Attendance at the presidential appeal hearing shall be limited to the college president or designee, the designated grievance officer, the complainant, and the person to whom the complaint is directed unless otherwise mutually agreed by the parties. The college president or presidential designee shall preside.

(iv) Either the complainant or the person to whom the complaint is directed may call witnesses at the discretion of the person presiding.

(v) The written findings of the presidential appeal will be considered final. No further intra-institutional appeal exists.

(2) If desired, inquiries or appeals beyond the institutional level may be directed to:

(a) Regional Director, Office of Civil Rights, Department of Education, HEW, 2901 3rd Avenue, M.S. 106, Seattle, Washington 98101.

(b) The Equal Opportunity Commission, 1321 2nd Avenue, 7th Floor, Arcade Plaza, Seattle, Washington 98101.

(c) The Human Rights Commission, 402 Evergreen Plaza Building, Mailstop FJ 41, 711 S. Capitol Way, Olympia, Washington 98502.)

(1) Purpose

(a) Those employees of Whatcom Community College who believe that they have been harassed/intimidated and/or discriminated against in employment or the employment application process, or any applicants for admission or students/members of the public who believe that they have been harassed/intimidated by or discriminated against by an employee or a student of the Whatcom Community College, are encouraged to report that belief to Whatcom Community College under this procedure's Complaint Process which follows.

(2) Definitions

(a) Designated Officer. Designated officer means an individual who is primarily responsible for conducting an initial inquiry, determining whether to proceed with an investigation under this procedure, and investigating or coordinating the investigation of reports and complaints of discrimination/harassment in accordance with this procedure.

(i) The human resources director is the designated officer for all issues except as follows: a) student-to-student complaints, for which the vice president for educational services is the designated officer; b) complaints against the human resources director for which the president is the designated officer.

(ii) A report/complaint against the president of the college shall be filed with the chair of the board of trustees. However, complaints against a president shall be processed by the college if the president's role in the alleged incident was limited to a decision on a recommendation made by another administrator, such as tenure, promotion or non-

renewal, and the president had no other substantial involvement in the matter.

(b) Decision Maker. Decision maker means a high level administrator who reviews the investigative reports, to make findings whether board policy (132U-300-10.2.3.) has been violated based upon the investigation, and to determine the appropriate action for the institution to take based upon the findings.

(i) The appropriate vice president with whom the complainant jurisdiction is the decision maker.

(ii) The president is the decision maker when the accused is an administrator.

(iii) The chair of board of trustees is the decision maker if the accused is the president.

(3) Complaint Process

(a) Incident Notification Form: Whatcom Community College has developed an *Incident Notification Form* on which any person may report complaints of discrimination and or harassment/intimidation, regardless of the complaint's basis. The form which includes directions on how to complete and route it properly is widely available and can be readily obtained from the human resources director. The form also identifies the limits of confidentiality and the Whatcom Community College's non-retaliation policy. Any supervisor or administrator is authorized to accept and forward the form, or it may be submitted directly to the human resources director for all issues except student-to-student complaints, which shall be forwarded to the vice president for educational services.

(b) Filing a Complaint/Officers Designated to Receive Complaints: Any employee/student or member of the public who believes he/she has been subject to harassment/intimidation and/or discrimination has the right to file a complaint. This complaint should be filed in a timely manner, but no later than one hundred eighty (180) calendar days from the most recent incident of the alleged behavior or action. Any supervisor or administrator is authorized to accept or take a complaint. If the complainant does not feel comfortable with filing a written complaint, the complaint may be verbally made, and the supervisor/administrator the supervisor/administrator will then document the verbal complaint on the *Incident Notification Form* which the complainant shall sign. If the employee or student believes he/she is being harassed or discriminated against by a supervisor, administrator or employee, he/she should notify the human resources director directly. All complaints, regardless of the perceived merit or basis, are to be forwarded for review and processing, without exception, directly to the human resources director for all issues except student-to-student complaints, which shall be forwarded to the vice president for educational services. In the event that the human resources director's conduct is the subject of the complaint, the president or his/her designee shall be the designated officer to receive such complaint.

(c) Complaint Consideration: Although isolated incidents of harassment/intimidation and/or discrimination may not violate federal or state law, such incidents may nevertheless create a knowing and willful course of conduct which seriously alarms, annoys, harasses or is detrimental to that person or the work environment, serves no legitimate or lawful purpose, or is in direct violation of board values or the col-

lege's *Affirmation of Inclusion* (WCC Policy 1023) regarding mutual respect. Such complaints will be taken seriously and considered under this procedure.

(d) Addressing Complaints: The administration of the college has an affirmative duty to take timely and appropriate action to stop behavior, conduct investigations and take appropriate action to prevent recurring misconduct. The human resources director, as the designated officer, is authorized to consider complaints of harassment and discrimination and to assess and/or investigate them for all of Whatcom Community College, with the exception of student-to-student complaints, which are under the jurisdiction of the vice president for educational services, or his/her designee. All complaints, regardless of the perceived merit or basis, are to be forwarded to the appropriate office for review and processing, without exception. The designated officer shall determine whether the report/complaint is one which should be mediated or processed through another designated officer; if appropriate, the designated officer shall direct the complainant to that area as soon as possible.

(e) Assessment: The designated officer will, within thirty (30) working days of receipt of the *Incident Notification Form*, (a) assess the written complaint; (b) determine the appropriate process necessary to ensure all relevant evidence is obtained and all critical elements are addressed; and (c) notify the appropriate vice president with whom the complainant jurisdiction resides when the accused is a faculty or classified staff; the president when the accused is an administrator; and the chair of board of trustees if the accused is the president.

(i) This normally begins with an initial interview with the complainant. The goal is to obtain sufficient information to determine the next steps, which may include, but is not limited to obtaining clarification, providing mediation and/or consultation services, making referrals for mediation and/or consultation services, and/or initiating a formal fact-finding investigation.

(ii) If a formal investigation is undertaken, the complainant and the accused will be alerted to the existence of a formal complaint and that an investigation of the complaint is underway.

(iii) This formal investigation may take up to sixty (60) calendar days after the receipt of the *Incident Notification Form*, unless extended by mutual agreement in writing between the complainant and the designated officer.

(iv) Under appropriate circumstances, the administration may, in consultation with system legal counsel and labor relations committee, reassign or place an employee on administrative leave at any point in time during the report/complaint/investigation process. In determining whether to place an employee on administrative leave or reassignment, consideration shall be given to the nature of the alleged behavior, the relationships between the parties, the context in which the alleged incidents occurred and other relevant factors. Any action taken must be consistent with the applicable collective bargaining agreements.

(v) Employees, as a condition of employment, are required to be truthful and to fully cooperate in the investigation process.

(f) Other Complaints: Conduct covered by this policy and procedure are those discriminatory and/or harassment/intimidation actions that occur as delineated in WAC 132U-300-010, 2.3. Complaints alleging conduct not covered by this policy and procedure will be remanded to the appropriate vice president/administrative officer for consideration and investigation as a performance-based issue.

(i) Harassment/intimidation and/or discrimination allegations based upon union activities are not included in this procedure, but covered by the various collective bargaining agreements between the Board of Trustees and its recognized faculty and employee representatives.

(g) Records: Copies of all complaints of harassment/intimidation and/or discrimination, and records related to a subsequent formal investigation conducted pursuant to that complaint, if any, shall be maintained confidentially to the extent allowed by law for an indeterminate period of time in the Human Resources Office.

(h) Confidentiality and Non-retaliation

(i) Confidentiality: To the extent possible, proceedings will be conducted in a discreet and sensitive manner. Anonymity and complete confidentiality cannot be guaranteed once a complaint is made or unlawful behavior is alleged. Files pertaining to the complaints will be maintained in confidence to the fullest extent of the law. Whatcom Community College cannot guarantee complete confidentiality.

(ii) Non-Retaliation: Retaliation by, for or against any participant (accused, accuser or witness) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation dealing with harassment/intimidation and/or discrimination is prohibited. Any person who thinks he/she has been the victim of retaliation should contact the Human Resources Director immediately.

(i) Rights of Accused — Notice of Complaint: If a formal investigation is undertaken, the accused will be alerted to the existence of a formal complaint and that an investigation of the complaint is underway. During the investigative process, the accused will be informed of his/her right to representation during any investigatory meeting.

(j) Findings Report: Within sixty (60) calendar days of the commencement of a formal investigation, to the extent appropriate, a Findings Report will be submitted to the appropriate vice president with whom the complainant jurisdiction resides and the president. This Findings Report will include the complaint and a synopsis of the investigation. The reporter is not precluded from providing specific recommendations in the Findings Report as to disciplinary actions or other actions to be done (i.e. training for everyone in a department where sexual jokes have gotten out of hand, etc.). The complainant and the accused will be informed of the results of the investigation in summary form.

(k) Corrective Action: The decision maker (the appropriate vice president with whom the complainant jurisdiction resides when the accused is a faculty or classified staff, the president when the accused is an administrator, or the chair of board of trustees if the accused is the president), will take appropriate corrective and/or disciplinary action in situations where it is proven or is reasonable to believe that harass-

ment/intimidation and/or discrimination took place. Any action taken will follow the due process provisions of applicable contracts or state law and regulations and will be reasonably calculated to end harassing/intimidation and/or discriminatory behavior and correct inappropriate behavior.

(4) Appeal process

(a) Any corrective and/or disciplinary action in situations where it is proven or is reasonable to believe that harassment/intimidation and/or discrimination took place on any level, except decisions by the board of trustees, may be appealed in writing to the president within fifteen (15) working days of the corrective and/or disciplinary action by either the complainant or the accused. The appeal must state specific reasons why the complainant or accused believes the decision was improper. Within fifteen (15) working days of the appeal, the president shall:

(i) Take actions recommended by the decision maker (vice president);

(ii) Reject the recommendations;

(iii) Modify the recommendations; or

(iv) Remand the recommendations to the decision maker (vice president) for further consideration; and

(v) Report in writing to the complainant, accused and vice president

(b) The decision of the chair of the board of trustees as to any complaint against the president may be reviewed by filing a complaint with the appropriate tribunal listed in section (5) Non-College Options, provided all time periods applicable to the tribunal are met.

(c) The actions of the president or, if applicable, the chair of the board of trustees, shall constitute final Whatcom Community College disposition of the matter. Upon action of the president, the complainant and accused shall have exhausted their administrative remedies within the College.

(d) However, in the event disciplinary action is undertaken against faculty member, the appeal process will be conducted in accordance with the standing faculty negotiated agreement.

(5) Non-College Options

(a) At any point during these proceedings, the complainant may choose to file with the Washington State Human Rights Commission, the Equal Opportunity Commission, and/or the U.S. Department of Education, Title IX.

(i) For anyone (employees, students, public): The Washington State Human Rights Commission, 711 S. Capitol Way, Suite 402, P O Box 42490, Olympia, WA 98504-2409; (360) 753-6770 or 1-800-233-3247; TTY 1-800-300-7525; website: www.hum.wa.gov

(ii) For employees: The United States Equal Opportunity Commission, Federal Office Building, 909 First Avenue, Suite 400, Seattle, WA 98104-1061; (206) 220-6883 or 1-800-669-4000; TTY 1-800-669-6820; website: www.eeoc.gov/seattle

(iii) For students: Office for Civil Rights, U.S. Department of Education, 915 2nd Avenue, Room 3310, Seattle, Washington 98174-1000; (206) 220-7900; TTY (206) 220-7907; website: www.edu.gov

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

WSR 07-20-001
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 20, 2007, 8:49 a.m., effective October 21, 2007]

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

Purpose: Ensure that course material contains up-to-date information.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124H-013.

Statutory Authority for Adoption: RCW 18.85.040(1) Director general powers and duties.

Other Authority: RCW 18.85.040(4).

Adopted under notice filed as WSR 07-14-060 on June 29, 2007.

Changes Other than Editing from Proposed to Adopted Version: In the sentence, "Course materials shall also be updated no later than thirty days after changes in forms, procedures or other revision to the practice of real estate which affect the validity or accuracy of the course material or instruction." Removed the words "in forms," from the above sentence as the real estate commission has stated that it was redundant.

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

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

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

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

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

Date Adopted: September 18, 2007.

R. Osgood, Assistant Director
Business and Professions Division

AMENDATORY SECTION (Amending WSR 00-08-035, filed 3/29/00, effective 7/1/00)

WAC 308-124H-013 Application process for previously approved courses. (1) If there are no changes for a previously approved course in the course content or in the original course approval application (~~((for a previously approved course))~~) or WAC 308-124H-025 affecting the topic areas or criteria for approval, the course will be approved

upon receipt of a course renewal application and payment of the required fee for one renewal cycle only.

(2) If there are changes in course content or in the original course approval application for a previously approved course, other than updating for changes required by WAC 308-124H-039, the application will not be processed as a renewal, and will require completion of a course approval application and payment of the required fee.

(3) If a course renewal application or a course approval application is submitted at least thirty days prior to the current course expiration date, the previous course approval shall remain in effect until action is taken by the director.

WSR 07-20-002
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 20, 2007, 8:50 a.m., effective October 21, 2007]

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

Purpose: (1) Reorganize for easier reading; (2) ensure that courses contain up-to-date information; and (3) ensure current topic areas are related to the practice of real estate.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124H-025.

Statutory Authority for Adoption: RCW 18.85.040(1) Director general powers and duties.

Other Authority: RCW 18.85.040(4).

Adopted under notice filed as WSR 07-14-061 on June 29, 2007.

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

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

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

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

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

Date Adopted: September 18, 2007.

R. Osgood, Assistant Director
Business and Professions Division

AMENDATORY SECTION (Amending WSR 03-02-001, filed 12/19/02, effective 1/19/03)

WAC 308-124H-025 General requirements for course approval. Courses shall meet the following requirements:

(1) Be offered by a private entity approved by the director to operate as a school;

(2) Be offered by a tax-supported, public technical or community college or other institution of higher learning that

certifies clock hours as indicated in RCW 18.85.010(9), consistent with the approval standards prescribed by the director and this chapter;

(3) Be offered by the Washington real estate commission;

(4) Have a minimum of three hours of course work or instruction for the student. A clock-hour is a period of fifty minutes of actual instruction;

(5) Provide practical information related to the practice of real estate in any of the following real estate topic areas: ~~((Fundamentals, practices, principles/essentials, real estate law, legal aspects, brokerage management, business management, taxation, appraisal, evaluating real estate and business opportunities, property management and leasing, construction and land development, ethics and standards of practice, real estate closing practices, current trends and issues, finance, hazardous waste and other environmental issues, commercial, real estate sales and marketing, instructor development or the use of computers and/or other technologies as applied to the practice of real estate;~~

~~(6))~~ (a) Department prescribed curricula:

(i) Fundamentals

(ii) Practices

(A) Residential

(B) Commercial

(iii) Real estate law

(iv) Brokerage management

(v) Business management

(vi) Core curriculum

(A) Residential

(B) Commercial

(C) Property management

(b) Open curricula:

(i) Legal aspects

(ii) Taxation

(iii) Appraisal

(iv) Evaluating real estate and business opportunities

(v) Property management and leasing

(vi) Construction and land development

(vii) Ethics and standards of practice

(viii) Real estate closing practices

(ix) Current trends and issues

(x) Principles/essentials

(xi) Finance

(xii) Hazardous waste and other environmental issues

(xiii) Commercial

(xiv) Real estate sales and marketing

(xv) Instructor development

(xvi) Consumer protection

(xvii) Cross cultural communication

(xviii) Advanced management practices

(xix) Use of computers and/or other technologies as applied to the practice of real estate

(6) Be under the supervision of an instructor approved to teach the topic area, who shall, at a minimum, be available to respond to specific questions from students on an immediate or reasonably delayed basis;

(7) The following types of courses will not be approved for clock hours: ~~((Course offerings in mechanical office and business skills, such as, keyboarding, speed-reading, memory~~

~~improvement, language, and report writing; orientation courses for licensees, such as those offered by trade associations; and personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business. Clock hours will not be awarded for any course time devoted to meals or transportation;~~

~~(8)) (a) Mechanical office and business skills, such as, keyboarding, speed-reading, memory improvement, grammar, and report writing;~~

~~(b) Standardized software programs such as word processing, e-mail, spreadsheets or data bases; an example: A course using spreadsheet program to demonstrate investment analysis would be acceptable, but a course teaching how to use a spreadsheet would not be acceptable;~~

~~(c) Orientation courses for licensees, such as those offered by trade associations;~~

~~(d) Personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business;~~

~~(e) Courses that are designed or developed to serve other professions, unless each component of the curriculum and content specifically shows how a real estate licensee can utilize the information in the practice of real estate;~~

~~(f) Personal finance, etiquette, or motivational type courses;~~

~~(g) Courses that are designed to promote or offer to sell specific products or services to real estate licensees such as warranty programs, client/customer data base systems, software programs or other devices. Services or products can be offered during nonclock hour time, such as breaks or lunch time. Letterhead, logos, company names or other similar markings by itself, on course material are not considered promotional;~~

~~(h) Clock hours will not be awarded for any course time devoted to meals or transportation;~~

(8) Courses of thirty clock hours or more which are submitted for approval shall include a comprehensive examination(s) and answer key(s) of no fewer than three questions per clock hour with a minimum of ninety questions, and a requirement of passing course grade of at least seventy percent; essay question examination keys shall identify the material to be tested and the points assigned for each question;

(9) Include textbook or instructional materials approved by the director, which shall be kept accurate and current;

(10) Not have a title which misleads the public as to the subject matter of the course;

(11) The provider's course application shall identify learning objectives and demonstrate how these are related to the practice of real estate;

(12) Courses offering the prescribed core curriculum shall meet the requirements of WAC 308-124A-605;

(13) Only primary providers shall be approved to teach the prescribed core curriculum; and

(14) Course providers offering core curriculum within a course exceeding three clock hours must clearly indicate in the application for approval where the core curriculum elements are met in the course.

WSR 07-20-003
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 20, 2007, 8:52 a.m., effective October 21, 2007]

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

Purpose: Ensure that course material contains up-to-date information.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124H-039.

Statutory Authority for Adoption: RCW 18.85.040(1) Director general powers and duties.

Other Authority: RCW 18.85.040(4).

Adopted under notice filed as WSR 07-14-059 on June 29, 2007.

Changes Other than Editing from Proposed to Adopted Version: In the sentence, "Course materials shall also be updated no later than thirty days after changes in forms, procedures or other revision to the practice of real estate which affect the validity or accuracy of the course material or instruction." Removed the words "in forms," from the above sentence as the real estate commission has stated that it was redundant.

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

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

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

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

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

Date Adopted: September 18, 2007.

Ralph Osgood, Assistant Director
 Business and Professions Division

AMENDATORY SECTION (Amending WSR 00-08-035, filed 3/29/00, effective 7/1/00)

WAC 308-124H-039 Changes and updates in approved courses. (1) Course materials shall be updated no later than thirty days after the effective date of a change in federal, state, or local statutes or rules. Course materials shall also be updated no later than thirty days after changes in procedures or other revisions to the practice of real estate which affect the validity or accuracy of the course material or instruction.

~~(2) ((Any change in course content or material other than updating for statute or rule changes, shall be submitted to the department prior to the date of using the changed course content material, for approval by the director.~~

~~(3))~~ Changes in course instructors may be made only if the substitute instructors are currently approved to teach the topic area pursuant to chapter 308-124H WAC.

WSR 07-20-006
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed September 20, 2007, 9:35 a.m., effective October 21, 2007]

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

Purpose: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-001 (amending Order 05-166, filed 8/3/05, effective 9/3/05), 220-47-302 (amending Order 06-173, filed 7/26/06, effective 8/26/06), 220-47-310 (amending Order 91-72, filed 8/27/91, effective 9/27/91), 220-47-311 (amending Order 06-173, filed 7/26/06, effective 8/26/06), 220-47-325 (amending Order 06-173, filed 7/26/06, effective 8/26/06), 220-47-401 (amending Order 06-173, filed 7/26/06, effective 8/26/06), and 220-47-411 (amending Order 06-173, filed 7/26/06, effective 8/26/06).

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Adopted under notice filed as WSR 07-15-097 on July 18, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

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

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

Date Adopted: September 20, 2007.

Phil Anderson
 for Jeff Koenings
 Director

AMENDATORY SECTION (Amending Order 05-166, filed 8/3/05, effective 9/3/05)

WAC 220-47-001 Puget Sound salmon—Quick reporting. All Puget Sound salmon fisheries are designated as "quick reporting required" fisheries, and commercial purchasers and receivers must comply with the provisions of WAC 220-69-240(~~((+10))~~) (12).

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

WAC 220-47-302 Puget Sound—Lawful gear—Gill net. (1) It is unlawful to use drift gill net salmon gear in Puget Sound that exceeds 1,800 feet in length or contains meshes of

a size less than 5 inches, except in Area 9A, where gill nets may not exceed 600 feet in length, or be more than 60 mesh deep, or contain mesh size less than 5 inches.

(2) It is unlawful to use skiff gill net salmon nets in Puget Sound that exceed 300 feet in length or 90 meshes in depth, or that contain meshes of a size less than 5 inches, except in Area 9A, where gill nets may not exceed 600 feet in length, or be more than 60 meshes deep, or contain mesh size less than 5 inches. It is unlawful to retrieve skiff gill nets by any means except by hand (no hydraulics may be used). It is unlawful to fail to attend to skiff gill nets at all times.

(3) Drift gill nets and skiff gill nets shall be operated substantially in a straight line. It is unlawful to set such nets in a circle or to set them in other than (~~(substantially in)~~) a substantially straight line.

(4) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A sockeye or pink salmon fisheries unless said gill net gear is constructed so that the first 20 meshes below the cork line are composed of five-inch mesh, white opaque, minimum 210/30d (#12) diameter, nylon twine.

(5) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A between the dates of September 30 and October (~~(44)~~) 20 unless the gill net vessel has aboard and uses operable recovery boxes as described in this subsection.

(a) Dimensions and capacities of required recovery boxes:

(i) Recovery boxes must have two chambers, if one box, or (~~(it may be two boxes with)~~) one chamber in each box, if two boxes.

(ii) Each recovery box chamber must have an inside length measurement of 48 inches, an inside width measurement of 10 inches, and an inside height measurement of 16 inches.

(iii) Each chamber of the recovery box must have an inlet hole measuring between 3/4 inch and 1 inch in diameter (~~(, and)~~). The inlet hole must be centered horizontally across the door or wall of the chamber, and the bottom of the hole must be located 1-3/4 inches above the floor of the chamber.

(iv) Each chamber of the recovery box must include a water outlet hole on the opposite wall from the inlet hole, and the outlet hole must be at least 1-1/2 inches in diameter, with the bottom of the outlet hole located 12 inches above the floor of the chamber.

(v) Flow of water through each chamber of the recovery boxes must be not less than 16 gallons per minute, nor more than 20 gallons per minute.

(b) Each box and chamber must be operating during any time that the net is being retrieved or picked.

(c) The vessel operator must demonstrate to department employees, upon request, that the pumping system is delivering the proper volume of fresh seawater into each chamber.

(d) All salmon not to be retained must be released immediately with care and with the least possible injury to the fish, or placed into the operating recovery box.

(e) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

(f) All fish placed in the recovery boxes must be released within the same catch area as the area of capture, and the release must occur prior to landing or docking.

(6) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

AMENDATORY SECTION (Amending Order 91-72, filed 8/27/91, effective 9/27/91)

WAC 220-47-310 Puget Sound net seasons—Time. During the openings provided for in this chapter, all times stated are Pacific Standard Time from January 1 through the (~~(first Saturday in April)~~) second Saturday in March and from the (~~(last Sunday in October)~~) first Sunday in November through December 31(~~(,)~~); and all times stated are Pacific Daylight Time from the (~~(first Sunday in April)~~) second Sunday in March to the (~~(last Saturday in October)~~) first Saturday in November.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for (~~(hereinafter)~~) in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	<u>7AM - 7PM with use of recovery box; 7AM - 4:00PM without use of recovery box</u>	<u>10/12</u>
((7, 7A:))	7AM - 6PM with use of recovery box; 7AM - 3:15PM without use of recovery box	((10/11, 10/12, 10/13, 10/18, 10/19, 10/20, 10/25, 10/26, 10/27)) <u>10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2</u>
	7AM - 5PM with use of recovery box; 7AM - 2:30PM without use of recovery box	((11/1, 11/2, 11/3, 11/8, 11/9, 11/10)) <u>11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16</u>
7B, 7C:	6AM - 8PM	((8/16, 8/23, 8/30)) <u>8/22, 8/29, 9/5</u>
	((7AM - 8PM)	9/6))
7B:	((7AM-9/11)) <u>7AM - 8PM</u>	- ((7PM-9/13)) <u>9/12</u>
	((7AM-9/17)) <u>7AM - 7PM</u>	- ((6PM-10/28)) <u>9/17, 9/18, 9/19</u>
	((7AM-10/30)) <u>7AM 9/23</u>	- ((4PM)) <u>6PM 11/3</u>
	7AM ((11/6)) <u>11/5</u>	- 4PM ((11/10)) <u>11/9</u>
	7AM ((11/13)) <u>11/12</u>	- 4PM ((11/17)) <u>11/16</u>
	7AM ((11/20)) <u>11/19</u>	- 4PM ((11/24)) <u>11/23</u>
	((8AM-11/27)) <u>7AM 11/26</u>	- 4PM ((12/4)) <u>11/30</u>
	<u>8AM 12/3</u>	= <u>4PM 12/7</u>

AREA	TIME	DATE
Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and ((is open)) until 4:00 p.m. on the first Friday in December.		
8:	7AM - 5PM	11/6
	7AM - 5PM	11/13
	7AM - 5PM	11/20
	7AM - 4PM	11/27
8A:	7AM - 7PM	Limited participation - two boats ((9/25, 10/2)) 10/1, 10/8.
	7AM - 6PM	((10/9, 10/16, 10/24, 10/26)) 10/15, 10/22, 10/30, 11/1
	7AM - 5PM	((11/1, 11/6, 11/8, 11/15)) 11/7, 11/12, 11/14, 11/20
	7AM - 4PM	((11/20, 11/22)) 11/26, 11/28
8D:	7AM - 7PM	((9/25, 10/2)) 9/24, 10/1, 10/8
	7AM - 6PM	((10/9, 10/16, 10/24, 10/26)) 10/15, 10/22, 10/30, 11/1
	7AM - 5PM	((11/1, 11/6, 11/8, 11/15)) 11/7, 11/12, 11/14, 11/20
	7AM - 4PM	((11/20, 11/22)) 11/26, 11/28
10, 11:	7AM - 6PM	((10/16, 10/23, 10/25)) 10/22, 10/29, 10/31
	7AM - 5PM	((10/30, 11/6, 11/8, 11/13)) 11/5, 11/12, 11/14, 11/19
	7AM - 4PM	((11/20)) 11/26
12, 12B:	7AM - 6PM	((10/16, 10/23, 10/25)) 10/22, 10/29, 10/31
	7AM - 5PM	((10/30, 11/6, 11/13)) 11/5, 11/12, 11/19
12C:	7AM - 5PM	((11/7, 11/14)) 11/13, 11/20
	7AM - 4PM	((11/21)) 11/27

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October ~~((29))~~ 27 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, and prior to September ~~((11))~~ 9 in Area 7B.

Chum salmon - prior to ~~((October 1))~~ September 30 in Areas 7 and 7A.

All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

WAC 220-47-325 Purse seine—Release of incidentally caught fish. (1) It is unlawful for any purse seine vessel operator landing salmon to ~~((land salmon))~~ do so directly into the hold. All salmon must be landed ~~((to))~~ onto the deck~~((s))~~ or sorting tray or table~~((s))~~ of the harvesting vessel, with the hold hatch cover~~((s))~~ closed, until the release of salmon that may not be retained is complete~~((s))~~; and additionally:

(2) In Areas 7 and 7A and prior to September ~~((11))~~ 16 in Areas 7B and 7C, it is unlawful for any purse seine vessel operator to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in this section prior to the seine net being removed from the water, unless otherwise provided for in this section.

(3) The brailer shall be constructed in the following manner and with the following specifications:

(a) A bag of web hung on a rigid hoop attached to a handle;

(b) The bag shall be opened by releasing a line running through rings attached to the bottom of the bag; and

(c) The web shall be of soft knotless construction, and the mesh size may not exceed 57 mm (2.25 inches) measured along two contiguous sides of a single mesh.

(4) Hand-held dip nets shall be constructed of a shallow bag of soft, knotless web attached to a handle.

(5) Fish may be brought on board without using a brailer or dip net as specified in this section if the number of fish in the net is small enough that the crew can hand-pull the bunt onto the vessel without the use of hydraulic or mechanical assistance.

(6) Fishers using a recovery box must have and operate the box in compliance with the provisions of WAC 220-47-302 (5)(a) through (f), and it is unlawful to fail to do so.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for ~~((hereinafter))~~ in each respective area:

AREA	TIME	DATE(S)
7, 7A	7AM - 7PM Daily	((9/16-11/11)) 9/16 - 11/17

(2) It is unlawful to retain Chinook salmon taken with reef net gear at all times, and it is unlawful to retain chum or wild coho salmon taken with reef net gear prior to ~~((October 1))~~ September 30.

(3) All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

WAC 220-47-411 Gill net—Open periods. It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for ~~((hereinafter))~~ in each respective fishing area:

AREA	TIME		DATE(S)	MINIMUM MESH
6D: Skiff gill net only.	7 AM	-	7 PM ((9/21, 9/22, 9/25, 9/26, 9/27, 9/28, 9/29, 10/2, 10/3, 10/4, 10/5, 10/6, 10/9, 10/10, 10/11, 10/12, 10/13, 10/16, 10/17, 10/18, 10/19, 10/20, 10/23, 10/24, 10/25, 10/26, 10/27)) 9/24, 9/25, 9/26, 9/27, 9/28, 10/1, 10/2, 10/3, 10/4, 10/5, 10/8, 10/9, 10/10, 10/11, 10/12, 10/15, 10/16, 10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released(;) must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	Noon	-	Midnight(;) Use of recovery box required ((10/11, 10/12, 10/13)) 10/12, 10/17, 10/18, 10/19	6 1/4"
	Noon	-	Midnight ((10/18, 10/19, 10/20, 10/25, 10/26, 10/27, 11/1, 11/2, 11/3, 11/8, 11/9, 11/10)) 10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2, 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16	6 1/4"

Note: In Areas 7 and 7A after September 30 but prior to October ((16)) 20, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

7B/7C:	7PM	-	7AM NIGHTLY ((8/14, 8/20, 8/22, 8/24, 8/27, 8/29, 8/31)) 8/20, 8/26, 8/28, 8/30, 9/3, 9/4, 9/6	7"
	7PM	-	8AM NIGHTLY ((9/4, 9/5, 9/7)) 9/9, 9/11, 9/13	((7")) 5"
7B:	6PM	-	8AM NIGHTLY ((9/10, 9/12, 9/14)) 9/16, 9/18, 9/21	5"
	7AM ((9/17)) 9/23	-	8PM ((10/28)) 10/27	5"
	7AM 10/28	-	8PM 11/3	6 1/4"
	7AM ((10/30)) 11/5	-	4PM ((11/3)) 11/9	6 1/4"
	7AM ((11/6)) 11/12	-	4PM ((11/10)) 11/16	6 1/4"
	7AM ((11/13)) 11/19	-	4PM ((11/17)) 11/23	6 1/4"
	7AM ((11/20)) 11/26	-	4PM ((11/24)) 11/30	6 1/4"
	8AM ((11/27)) 12/3	-	4PM ((12/1)) 12/7	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and ((is open)) until 6:00 PM on the first Friday in December.

8:	7AM	-	7PM ((10/30, 11/1, 11/3, 11/6, 11/8, 11/10, 11/13, 11/15, 11/17)) 11/5, 11/7, 11/9, 11/12, 11/14, 11/16, 11/19, 11/21, 11/23	6 1/4"
	7AM	-	((11/20, 11/22, 11/24)) 11/26, 11/28, 11/30	6 1/4"
8A:	6PM	-	8AM NIGHTLY ((10/3)) 10/9	5"
	((5PM)) 7AM	-	8((AM)) PM ((NIGHTLY 10/10, 10/12, 10/13)) 10/16, 10/18, 10/19	5"
	8AM	-	8PM ((10/17, 10/19, 10/20)) 10/23, 10/25, 10/26, 10/29, 10/31, 11/2	((5")) 6 1/4"
	((8AM)) 7AM	-	8PM 10/23, 10/25, 10/27	6 1/4"))
	7AM	-	7PM ((10/31, 11/2, 11/3, 11/7, 11/9, 11/10, 11/14, 11/16, 11/17)) 11/6, 11/8, 11/9, 11/13, 11/15, 11/16, 11/21, 11/22, 11/23	6 1/4"
	7AM	-	6PM ((11/21, 11/23, 11/24)) 11/27, 11/29, 11/30	6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH	
8D:	6PM	-	8AM	NIGHTLY ((9/24, 9/26, 9/28, 10/1, 10/3, 10/5)) 9/23, 9/25, 9/27, 9/30, 10/2, 10/4, 10/7, 10/9, 10/11	5"
	((5PM)) 7AM	-	8((AM)) PM	((NIGHTLY 10/8, 10/10, 10/12)) 10/18, 10/19	5"
	8AM	-	8PM	((10/19, 10/20, 10/26, 10/27)) 10/25, 10/26, 11/1, 11/2	5"
	7AM	-	7PM	((11/2, 11/3)) 11/8, 11/9	5"
	7AM	-	7PM	((11/9, 11/10, 11/16, 11/17)) 11/15, 11/16, 11/21, 11/23	6 1/4"
	7AM	-	6PM	((11/23, 11/24)) 11/29, 11/30	6 1/4"
9A:	7PM	-	7AM	NIGHTLY ((8/22, 8/24)) 8/28, 8/30	5"
	6AM	-	((8PM-10/28)) 7PM		5"
	((8/27)) 9/26		11/3		

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon ((not-to-be retained)) required to be released must be ((released)) removed from the net by cutting the meshes ensnaring the fish.

10, 11:	4PM	-	7AM	NIGHTLY ((10/45)) 10/21	6 1/4"	
	5PM	-	((8AM)) 9AM	NIGHTLY ((10/17, 10/18)) 10/23	6 1/4"	
	((4PM)) 3PM	-	7AM	NIGHTLY ((10/22, 10/24)) 10/28, 10/30	6 1/4"	
	5PM	-	((8AM)) 9AM	NIGHTLY ((10/25)) 10/31	6 1/4"	
	3PM	-	7AM	NIGHTLY ((10/29)) 11/4	6 1/4"	
	4PM	-	8AM	NIGHTLY ((10/31, 11/1)) 11/6	6 1/4"	
	3PM	-	7AM	NIGHTLY ((11/5, 11/7)) 11/11, 11/13	6 1/4"	
	4PM	-	8AM	NIGHTLY ((11/8)) 11/14	6 1/4"	
	3PM	-	7AM	NIGHTLY ((11/12)) 11/18	6 1/4"	
	4PM	-	8AM	NIGHTLY ((11/14, 11/15)) 11/20	6 1/4"	
	2PM	-	7AM	NIGHTLY ((11/19)) 11/25	6 1/4"	
	3PM	-	8AM	NIGHTLY ((11/21, 11/22)) 11/27	6 1/4"	
	12A: Skiff gill net only.	7AM	-	7PM	((9/5, 9/12, 9/19, 9/26, 10/3, 10/10)) 9/4, 9/11, 9/18, 9/25, 10/2	5"

Note: In Area 12A, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released((s)) must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	8AM	-	8PM	((10/17, 10/19, 10/24, 10/26)) 10/24, 10/25, 10/30, 11/1, 11/2	6 1/4"
	7AM	-	7PM	((10/31, 11/2, 11/7, 11/9, 11/14, 11/16)) 11/7, 11/8, 11/14, 11/15, 11/20	6 1/4"
12C:	7AM	-	7PM	((11/7, 11/9, 11/14, 11/16)) 11/13, 11/15, 11/20, 11/22	6 1/4"
	7AM	-	6PM	((11/21, 11/22)) 11/26, 11/27	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

WSR 07-20-014
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 20, 2007, 4:52 p.m., effective October 21, 2007]

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

Purpose: WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards, this rule references the national consensus [consensus] code for commercial shellfish operations, which all shellfish-producing states are required to follow in order to place molluscan shellfish into

interstate commerce. The reference has been changed from the 2003 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (guide) to the 2005 guide.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-005.

Statutory Authority for Adoption: RCW 69.30.030.

Adopted under notice filed as WSR 07-12-089 on June 6, 2007.

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

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 20, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 06-01-055, filed 12/16/05, effective 1/16/06)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((2003)) 2005 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of food safety and shellfish programs);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

WSR 07-20-030

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 24, 2007, 4:05 p.m., effective October 25, 2007]

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

Purpose: To make waivers more directly linked to student academic achievement, school and district improvement plans, and to increase accountability for district and school use of waivers.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-18-060; and amending WAC 180-18-030, 180-18-040, and 180-18-050.

Statutory Authority for Adoption: RCW 28A.150.220 (4), 28A.305.140, 28A.305.130(6), 28A.655.180.

Adopted under notice filed as WSR 07-14-102 on July 2, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 19, 2007.

Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 01-24-092, filed 12/4/01, effective 1/4/02)

WAC 180-18-030 Waiver from total instructional hour requirements. A district desiring to ((implement a local restructuring plan to provide an effective educational system to enhance)) improve student achievement by enhancing the educational program for all students may apply to the state board of education for a waiver from the total instructional hour requirements. The state board of education may grant said waiver requests pursuant to RCW 28A.305.140 and WAC 180-18-050 for up to three school years.

AMENDATORY SECTION (Amending WSR 95-20-054, filed 10/2/95, effective 11/2/95)

WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement and student-to-teacher ratio requirement. (1) A district desiring to ((implement a local restructuring plan to provide an effective educational system to enhance)) improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.150.220(5) and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The state board of education may grant said initial waiver requests for up to three school years.

(2) A district desiring to ((implement a local restructuring plan to provide an effective educational system to

~~enhance~~) improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the student-to-teacher ratio requirement pursuant to RCW 28A.150.250 and WAC 180-16-210, which requires the ratio of the FTE students to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. The state board of education may grant said initial waiver requests for up to three school years.

AMENDATORY SECTION (Amending WSR 04-04-093, filed 2/3/04, effective 3/5/04)

WAC 180-18-050 (~~Local restructuring plan requirements~~) Procedure to obtain waiver. (1) State board of education approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 shall occur at a state board meeting prior to implementation. A district's waiver application shall be in the form of a resolution adopted by the district board of directors (~~which includes a request for the waiver and a plan for restructuring the educational program of one or more schools which consists of at least the following information:~~

- ~~(a) Identification of the requirements to be waived;~~
 - ~~(b) Specific standards for increased student learning that the district expects to achieve;~~
 - ~~(c) How the district plans to achieve the higher standards, including timelines for implementation;~~
 - ~~(d) How the district plans to determine if the higher standards are met;~~
 - ~~(e) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan; and~~
 - ~~(f) Evidence that opportunities were provided for families, parents, and citizens to be involved in the development of the plan.~~
- ~~(2) The district plan for restructuring the educational program of one or more schools in the district may consist of the school improvement plans required under WAC 180-16-220, along with the requirements of subsection (1)(a) through (d) of this section.~~

~~(3))~~ The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution shall be accompanied by information detailed in the guidelines and application form available on the state board of education's web site.

(2) The application for a waiver and all supporting documentation must be received by the state board of education at least thirty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-18-060

Waiver renewal procedure.

WSR 07-20-034 PERMANENT RULES DEPARTMENT OF EARLY LEARNING

[Filed September 25, 2007, 1:57 p.m., effective October 26, 2007]

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

Purpose: The early childhood education and assistance program was moved from the department of community, trade, and economic development to the newly established department of early learning on July 1, 2006. This proposal does not affect the existing rules, but is a technical fix to change the department name to the department of early learning.

Citation of Existing Rules Affected by this Order: Amending chapter 170-100 WAC.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Adopted under notice filed as WSR 07-14-038 on June 27, 2007.

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

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

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

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

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

Date Adopted: September 10, 2007.

Jone M. Bosworth

Director

AMENDATORY SECTION (Amending WSR 06-18-085, filed 9/5/06, effective 9/5/06)

WAC 170-100-030 Definitions. (1) "Contractor" means a nonsectarian public or private organization that contracts with the department of (~~community, trade, and economic development~~) early learning to provide local early childhood education and assistance services.

(2) "Department" means the department of (~~community, trade and economic development~~) early learning.

(3) "Director" means the director of the department of ~~((community, trade and economic development))~~ early learning.

WSR 07-20-036

PERMANENT RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed September 25, 2007, 3:52 p.m., effective October 26, 2007]

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

Purpose: The rules accept the program for assessment of veterinary education equivalence (PAVE) for assessment of the educational equivalence of graduates from nonaccredited programs. The rules also update references to scoring of examinations, repeal outdated regulations related to frequency and location of the national examination and repeal outdated regulations related to examination review procedures of a failed examination.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-933-230, 246-933-260 and 246-933-280; and amending WAC 246-933-250 and 246-933-270.

Statutory Authority for Adoption: RCW 18.92.030.

Adopted under notice filed as WSR 07-10-121 on May 2, 2007.

A final cost-benefit analysis is available by contacting Judy Haenke, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, phone (360) 236-4947, fax (360) 586-4359, e-mail judy.haenke@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 3.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 3.

Date Adopted: September 24, 2007.

Williard R. Nelson, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 01-02-066, filed 12/29/00, effective 1/29/01)

WAC 246-933-250 Examination and licensure requirements ~~((and procedures))~~. ~~((In order to be licensed, any applicant for licensure must have successfully completed))~~ To qualify for licensure in this state, a candidate must:

(1) Successfully complete either the North American Veterinary Licensing Examination (NAVLE), or the National Board Examination for Veterinary Medical Licensing (NBE), ~~((and))~~ with the Clinical Competency Test (CCT)~~((All applicants must also pass))~~; and

(2) Successfully complete the Washington state jurisprudence examination~~((The Washington state examination shall consist of questions pertaining to laws regulating the practice of veterinary medicine in the state. The applicant may take the examinations up to six months prior to graduation from a course of instruction as described in WAC 246-933-220))~~; and

(3) Be a graduate of a program that is accredited by the American Veterinary Medical Association. A person who is a graduate of a college of veterinary medicine not accredited by the American Veterinary Medical Association must:

(a) Successfully complete the American Veterinary Medical Association's Educational Commission for Foreign Veterinary Graduates program (ECFVG); or

(b) Successfully complete the American Association of Veterinary State Board's Program for the Assessment of Veterinary Education Equivalence (PAVE); and

(4) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

NEW SECTION

WAC 246-933-265 Scope of Washington state jurisprudence examination. (1) The Washington state jurisprudence examination consists of multiple choice questions relating to state laws and administrative regulations in the practice of veterinary medicine.

(2) A candidate may take the Washington state jurisprudence examination up to six months prior to graduation from an approved course of study.

(3) The passing score on the examination is ninety percent.

(4) A candidate may retake the examination by submitting an application and fee to the department of health.

AMENDATORY SECTION (Amending WSR 01-02-066, filed 12/29/00, effective 1/29/01)

WAC 246-933-270 Examination results. ~~((1) In order to pass the examination for licensure as a veterinarian, the applicant shall attain a grade that meets or exceeds the criterion-referenced passing score established by the National Board Examination Committee of the American Veterinary Medical Association for the North American Veterinary Licensing Examination (NAVLE). Additionally, the applicant must attain a minimum grade of ninety percent on the Washington state examination.~~

~~((2) An applicant who fails the North American Veterinary Licensing Examination (NAVLE), or the Washington state examination may retake the examination that he or she failed by completing an application and by submitting the reexamination fee to the Veterinary Board of Governors.))~~ The board accepts the following minimum passing score for licensure examinations.

(1) The minimum passing score for the North American Veterinary Licensing Examination (NAVLE) is the criterion-

referenced passing score established by the National Board of Veterinary Medical Examiners.

(2) The minimum passing score before December 1982 for the National Board Examination for Veterinary Medical Licensing (NBE), and the Clinical Competency Test (CCT) is 1.5 standard deviation below the mean of the criterion population. From December 1992 through April 2000 the minimum passing score is the criterion referenced passing score required by the National Board of Veterinary Medical Examiners.

(3) The minimum passing score on the Washington state jurisprudence examination is ninety percent.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-933-230	Foreign trained veterinarians.
WAC 246-933-260	Frequency and location of examinations.
WAC 246-933-280	Examination review procedures.

WSR 07-20-041
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 25, 2007, 4:50 p.m., effective October 26, 2007]

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

Purpose: The purpose of the revisions is to bring together the pertinent federal regulations relating to contact lenses into the existing consumer access to vision care rules. These revisions will allow practitioners to be better informed about state and federal regulations related to contact lens prescribing and the refilling of current contact lens prescriptions.

Citation of Existing Rules Affected by this Order: Amending WAC 246-852-010, 246-852-020, 246-852-030, and 246-852-040.

Statutory Authority for Adoption: RCW 18.195.050.

Adopted under notice filed as WSR 07-12-053 on June 1, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 4, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: September 25, 2007.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-852-005 Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Contact lens" means any contact lens for which state or federal law requires a prescription including noncorrective or plano contact lenses.

(2) "Initial prescription" means a written directive from a prescriber for corrective lenses and consists of the refractive powers.

(3) "Fitting" means the performance of mechanical procedures and measurements necessary to adapt and fit eyeglasses or contact lenses from an initial written prescription containing the information in WAC 246-852-020. In the case of contact lenses, where a patient requests that the fitting be performed by an optician licensed under chapter 18.34 RCW, the initial prescription from a prescriber must be in writing and fitting includes the selection of physical characteristics of the lenses including conversion of the spectacle power to contact lens equivalents, lens design, material and manufacturer of the lenses, and supervision of the trial wearing of the lenses which may require incidental revisions during the fitting period. The revisions may not alter the effect of the written prescription. The fitting and follow-up evaluation must be completed within six months of the eye examination.

(4) "Finalized contact lens prescription" means a contact lens prescription consisting of the contact lens specifications approved by a prescriber at the conclusion of the follow-up evaluation.

(5) "Contact lens prescription" means a postevaluation finalized prescription, issued by a prescriber in accordance with state and federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses that includes the following:

- (a) Name of the patient.
- (b) Date of original examination.
- (c) Issue date of the finalized contact lens prescription and expiration date of that prescription.
- (d) The name, postal address, telephone number and facsimile number of the evaluating prescriber.
- (e) Dioptric power.
- (f) Lens material, brand name and/or manufacturer.
- (g) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of an equivalent brand name.
- (h) Base curve (inside radius of curvature), or appropriate designation.
- (i) Diameter.
- (j) Color (when applicable).
- (k) Thickness (when applicable).
- (l) Secondary/peripheral curves (when applicable).
- (m) Special features equivalent to variable curves, fenestration or coating.
- (n) Suggested wearing schedule and care regimen.
- (o) Signature of the evaluating prescriber.

(6) "Contact lens prescription issue date" means the date on which the patient receives a copy of the finalized contact lens prescription at the completion of the fitting and follow-up evaluation.

(7) "Ophthalmic goods" means eyeglasses or a component or components of eyeglasses, and contact lenses.

(8) "Ophthalmic services" means the measuring, fitting, adjusting, and fabricating of ophthalmic goods subsequent to an eye examination.

(9) "Prescriber" means an ophthalmologist or optometrist who performs eye examinations under chapter 18.53, 18.57, or 18.71 RCW.

(10) "Private label contact lenses" means contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under other labels.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

WAC 246-852-010 Duties of practitioners ((pursuant to chapter 106, Laws of 1994)). (1) Prescribers, including ophthalmologists and optometrists, under chapters 18.53, 18.57, or 18.71 RCW:

(a) When performing an eye examination including the determination of the refractive condition of the eye, shall provide the patient a copy of the initial prescription at the conclusion of the eye examination. A prescriber may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination or fitting and follow-up evaluation, but only if that prescriber would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required. Verification of insurance coverage for a service shall be deemed a payment.

(b) Shall, if requested by the patient, at the time of the eye examination, also determine the appropriateness of contact lenses wear and include a notation of "OK for Contacts" or similar language on the prescription if the prescriber would have fitted the patient him or herself, if the patient has no contraindications for contact lenses.

(c) Shall inform the patient that failure to complete the initial fitting and obtain a follow-up evaluation by a prescriber within six months of the initial exam will void the "OK for Contacts" portion of the prescription.

(d) Shall provide a verbal explanation to the patient if the prescriber determines the ocular health of the eye presents a contraindication for contact lenses. Documentation of contraindication will also be maintained in the patient's record.

(e) May exclude categories of contact lenses where clinically indicated.

(f) Shall not expire prescriptions in less than two years, unless a shorter time period is warranted by the ocular health of the eye. If a prescription is to expire in less than two years, an explanatory notation must be made by the prescriber in the patient's record and a verbal explanation given to the patient at the time of the eye examination.

(g) Shall comply with WAC 246-852-020.

(2) When conducting a follow-up evaluation for contact lenses fitted and dispensed by another practitioner, the prescriber:

(a) Shall indicate on the written prescription, "follow-up completed" or similar language, and include his or her name and date of the follow-up;

(b) May charge a reasonable fee at the time the follow-up evaluation is performed;

(c) Shall provide the patient a copy of the finalized contact lens prescription, whether or not the patient requested it.

(d) When directed by any person designated to act on behalf of the patient, the prescriber shall provide or verify the contact lens prescription by electronic or other means.

(3) Opticians under chapter 18.34 RCW:

(a) May perform mechanical procedures and measurements necessary to adapt and fit contact lenses from a written prescription consisting of the refractive powers and a notation of "OK for Contacts" or similar language within six months of the initial eye examination date.

(b) Shall notify patients in writing that a prescriber is to evaluate the initial set of contact lenses on the eye within six months of the eye examination or the "OK for Contacts" portion of the prescription is void and replacement contact lenses will not be dispensed. The patient shall be requested to sign the written notification. The signed or unsigned notification will then be dated and placed in the patient's records.

(4) If the patient is fitted by a practitioner other than the initial prescriber, the contact lens specifications shall be provided to the patient and to a prescriber performing the follow-up evaluation.

(5) When the follow-up evaluation is completed by a prescriber, the approved contact lens specifications shall become a valid contact lens prescription ((with the signature of the evaluating prescriber)). The patient shall be provided a copy of the finalized contact lens prescription as specified in subsection (2)(c) of this section, whether or not the patient requested it. The patient shall be able to obtain replacement contact lenses, from this finalized prescription, for the remainder of the prescription period.

(6) All fitters and dispensers shall distribute safety pamphlets to all contact lens patients designed to inform the patient of consumer and health-related decisions.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

WAC 246-852-020 Initial prescription for corrective lenses. (1) ~~((A))~~ An initial prescription from a prescriber for corrective lenses shall at a minimum include:

(a) Patient name.

(b) Prescriber's name, address, professional license number, phone number and/or facsimile number.

(c) Spectacle prescription.

(d) Prescription expiration date.

(e) Date of eye exam.

(f) Signature of prescriber.

(2) If, at the time of the initial eye examination, the patient requests contact lenses ((and has received an eye examination for contact lenses)), the prescriber shall determine the appropriateness of contact lens wear. If the pre-

scriber would have fitted the patient him or herself, and if the patient has no contraindications for contact lenses, the prescriber shall include a notation of "OK for Contacts" or similar language on the prescription. The initial prescription shall also include:

(a) ~~((The notation "OK for Contacts" or similar language indicating there are no contraindications for contacts.~~

~~(b))~~ Exclusion of categories of contact lenses, if any.

~~((e))~~ (b) Notation that the "OK for Contacts" portion of the prescription becomes void if the patient fails to complete the initial fitting and obtain the follow-up evaluation by a prescriber within the six-month time period.

(3) When the follow-up evaluation is completed, the approved contact lens specifications shall become a valid prescription ~~((with the signature of the evaluating prescriber))~~. The patient shall be able to obtain replacement lenses, from this finalized prescription, for the remainder of the prescription period.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

WAC 246-852-030 Transmittal of patient information ~~(and)~~, records, and contact lens prescriptions. (1) The practitioner who performs the contact lens fitting shall provide the contact lens specifications to a prescriber designated by the patient for the purpose of the follow up and final evaluation. The contact lens specification shall be transmitted to the designated practitioner by telephone, facsimile, mail or by electronic means.

(2) The finalized contact lens prescription ~~((of the contact lens specifications))~~ shall be ~~((available))~~ provided to the patient ~~((or))~~ and, if requested, to the patient's designated practitioner for replacement lenses and ~~((may))~~ shall be transmitted by telephone, facsimile or mail or ~~((provided directly to the patient in writing. The initial prescriber may request and receive the finalized contact lens specifications, if the initial prescriber does not perform the fitting and follow up evaluation))~~ by electronic means.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

WAC 246-852-040 Retention of patient contact lens records. (1) Practitioners shall maintain patient records for a minimum of five years. The records shall include the following which adequately reflects the level of care provided by the practitioners:

(a) The initial written prescription.

(b) Dioptric power.

(c) Lens material, brand name and/or manufacturer.

(d) Base curve (inside radius of curvature), or appropriate designation.

(e) Diameter.

(f) Color (when applicable).

(g) Thickness (when applicable).

(h) Secondary/peripheral curves (when applicable).

(i) Special features equivalent to variable curves, fenestration or coating.

(j) Suggested wearing schedule and care regimen.

(k) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of an equivalent brand name.

(2) Opticians' records shall additionally include the following if fitting contact lenses:

~~((a))~~ Documentation of written advisement to the patient of the need to obtain a follow-up evaluation by a prescriber.

(3) Prescribers' records shall additionally include the following:

(a) Documentation of contraindications which would prohibit contact lens wear and documentation that contraindications were explained to the patient by the prescriber.

(b) Explanatory notation of the reasons why a prescription has an expiration date of less than two years, and documentation that the reasons were explained to the patient at the time of the eye examination.

WSR 07-20-042

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 26, 2007, 8:31 a.m., effective October 27, 2007]

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

Purpose: The department is creating new WAC 388-310-2100 WorkFirst career services program and amending WAC 388-418-0005 How will I know what changes I must report? This rule change is necessary to implement the new WorkFirst career services program which will provide cash payments and employment services to eligible parents who choose to enroll. Funds were appropriated for this new post-temporary assistance to needy families (TANF) employment assistance program in SHB 1128, chapter 522, Laws of 2007, effective May 15, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0005.

Statutory Authority for Adoption: RCW 74.04.050 and 74.04.055.

Other Authority: Chapter 522, Laws of 2007.

Adopted under notice filed as WSR 07-16-115 on July 31, 2007.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: September 24, 2007.

Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-310-2100 WorkFirst career services program. (1) What is the WorkFirst career services program?

The WorkFirst career services program is available to employed adults who leave temporary assistance for needy families (TANF) or state family assistance (SFA) and are working thirty hours or more per week. The employment security department administers the program.

WorkFirst career services provide up to six months of:

- Basic needs payments;
- Wage progression services; and
- Job retention services.

(2) Who is eligible for the WorkFirst career services program?

(a) To qualify for the program, you must enroll with the employment security department within the first two months after your TANF/SFA ends.

(b) You must also meet the following conditions:

- (i) You are working thirty hours or more per week in a paid unsubsidized job; and
- (ii) You are a custodial parent or caretaker relative who received TANF/SFA within the past two months; and
- (iii) You did not leave TANF/SFA in sanction status.

(c) Each adult in your family who meets these conditions and enrolls in the program will receive their own basic needs payments and services.

(3) What services and basic needs payments are available while I am enrolled in the WorkFirst career services program?

The WorkFirst career services program provides wage progression services, job retention services and basic needs payments.

(a) Services include employment planning that will help you keep your job and increase your wages.

(b) As shown in the chart below, cash payments and bonuses are made monthly, for up to six consecutive months after leaving TANF/SFA.

(c) You may receive up to six hundred fifty dollars in cash payments and bonuses over the six-month period following your TANF/SFA case closing.

Eligible Month	Payments & Bonus Amounts	Description of Payments and Bonuses
Month 1-6 After TANF/SFA	\$50.00 a month	Monthly payments begin once you enroll. If you enroll during Month 2, then you are not eligible for the Month 1 payment.
Month 1 or 2	\$150.00	One-time enrollment bonus when you sign up for the program.

Eligible Month	Payments & Bonus Amounts	Description of Payments and Bonuses
Month 4 and 6	\$100.00 month 4 \$100.00 month 6	Bonus for completing the WorkFirst career services assessment and employment planning interview.

(4) How long can I receive WorkFirst Career Services and basic needs payments?

(a) WorkFirst career services and basic needs payments are available for a maximum of six consecutive months. Month one begins the calendar month after your TANF/SFA assistance ends.

(b) Your WorkFirst career services and basic needs payments will stop when:

- (i) We learn you are no longer working thirty hours a week in unsubsidized employment; or
- (ii) You begin receiving TANF/SFA assistance again; or
- (iii) We do not have your current mailing address; or
- (iv) You are not living in Washington; or
- (v) It has been more than six months since you stopped receiving TANF/SFA.

(5) What happens if the employment security department learns I am no longer working thirty hours or more per week?

(a) The employment security department will provide you with a letter giving you at least ten days advance notice that your WorkFirst career services will close. This means that your WorkFirst career services basic needs payments will stop at the end of the month in which your ten days notice expires. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(b) If you find a new job or increase your hours back up to thirty hours before the end of the month, you will remain eligible.

(c) Employment Security staff can help you find new employment or work with you to increase your hours of employment.

(6) What happens if I am approved for TANF/SFA assistance while I am receiving WorkFirst career services?

If you start receiving TANF/SFA assistance, the employment security department will provide you with a letter and close your WorkFirst career services case at the end of the month. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(7) What happens if I request an administrative hearing?

(a) You have the right to request an administrative hearing if you disagree with a decision or action regarding the WorkFirst career services Program. For more information, see chapter 388-02 WAC and RCW 74.08.080.

(b) If you receive continued benefits, they will still end when you reach your benefit maximum as outlined under (3)(c) regardless of any other pending administrative hearing.

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

WAC 388-418-0005 How will I know what changes I must report? You must report changes to the department

based on the kinds of assistance you receive. The set of changes you must report for people in your assistance unit under chapter 388-408 WAC is based on the benefits you receive that require you to report the most changes. It is the first program that you receive benefits from in the list below.

For example:

If you receive long term care and Basic Food benefits, you tell us about changes based on the long term care requirements because it is the first program in the list below you receive benefits from.

(1) If you receive long term care benefits such as Basic, Basic Plus, chore, community protection, COPEs, nursing home, Hospice, or medically needy waiver, you must tell us if you have a change of:

- (a) Address;
- (b) Marital status;
- (c) Living arrangement;
- (d) Income;
- (e) Resources;
- (f) Medical expenses; and

(g) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

(2) If you receive medical benefits based on age, blindness, or disability (SSI-related medical), or ADATSA benefits, you need to tell us if:

- (a) You move;
- (b) A family member moves into or out of your home;
- (c) Your resources change; or
- (d) Your income changes. This includes the income of you, your spouse or your child living with you.

(3) If you receive Basic Food and all adults in your assistance unit are elderly persons or individuals with disabilities and have no earned income, you need to tell us if:

- (a) You move;
- (b) You start getting money from a new source;
- (c) Your income changes by more than fifty dollars;
- (d) Your liquid resources, such as your cash on hand or bank accounts, are more than two thousand dollars; or
- (e) Someone moves into or out of your home.

(4) If you receive cash benefits other than WorkFirst career services benefits, you need to tell us if:

- (a) You move;
- (b) Someone moves out of your home;
- (c) Your total gross monthly income goes over the:
 - (i) Payment standard under WAC 388-478-0030 if you receive general assistance; or
 - (ii) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;
- (d) You have liquid resources more than four thousand dollars; or
- (e) You have a change in employment. Tell us if you:
 - (i) Get a job or change employers;
 - (ii) Change from part-time to full-time or full-time to part-time;
 - (iii) Have a change in your hourly wage rate or salary; or
 - (iv) Stop working.

(5) If you receive family medical benefits, you need to tell us if:

- (a) You move;
- (b) A family member moves out of your home; or

(c) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.

(6) If you receive Basic Food benefits, you need to tell us if:

- (a) You move;
- (b) Your total gross monthly income is more than the gross monthly income limit under WAC 388-478-0060; or

(c) Anyone who receives food benefits in your assistance unit must meet work requirements under WAC 388-444-0030 and their hours at work go below twenty hours per week.

(7) If you receive children's medical benefits, you need to tell us if:

- (a) You move; or
 - (b) A family member moves out of the house.
- (8) If you receive pregnancy medical benefits, you need to tell us if:

- (a) You move; or
 - (b) You are no longer pregnant.
- (9) If you receive other medical benefits, you need to tell us if:

- (a) You move; or
 - (b) A family member moves out of the home.
- (10) If you receive transitional food assistance or Work-First career services benefits, you do not have to report any changes in your circumstances.

WSR 07-20-044

PERMANENT RULES

FOREST PRACTICES BOARD

[Filed September 26, 2007, 9:04 a.m., effective October 27, 2007]

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

Purpose: Authorize the department of natural resources to grant approvals of small forest landowners' applications for terms of up to fifteen years.

Citation of Existing Rules Affected by this Order: Amending WAC 222-12-030, 222-12-035, 222-12-0401, 222-12-0402, 222-16-010, 222-16-050, 222-20-010, 222-20-015, 222-20-020, 222-20-030, 222-20-040, 222-20-050, 222-20-060, 222-20-080, 222-20-100, and 222-20-120.

Statutory Authority for Adoption: RCW 76.09.040, 76.09.010 (2)(d).

Adopted under notice filed as WSR 07-14-039 on June 27, 2007.

Changes Other than Editing from Proposed to Adopted Version: (1) The proposed amendment to WAC 220-12-090(18) was not adopted. The amendment would have replaced one of the listed board manual sections with a board manual to guide small forest landowners in developing long-term applications. The guidance will instead be published in the form of a brochure and other informational documents.

(2) The board adopted additional language to make sure it's understood that small forest landowner applications may be classified Class III and Class IV (except conversions to a use other than commercial timber production).

A final cost-benefit analysis is available by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-

7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 15, Repealed 0.

Date Adopted: September 11, 2007.

Victoria Christiansen
Chair

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-030 ((Classes of forest practices.))
Application information and classes of forest practices.
Forest practices are divided into four classes as specified by RCW 76.09.050(~~(-In certain emergencies, as defined in RCW 76.09.060(7), the application or notification may be submitted within 48 hours after commencement of the practice-)~~) and described in WAC 222-16-050. Review periods and application and notification requirements differ as follows:

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices rules.

(2) **Class II forest practices** require a notification to the department, and may begin ~~((5))~~ five calendar days (or such lesser time as the department may determine) after receipt of a complete notification by the department.

(3) **Class III forest practices** must be approved or disapproved within ~~((30))~~ thirty or fewer calendar days of receipt of ~~((an))~~ a complete application by the department. The department is directed to approve or disapprove within ~~((14))~~ fourteen calendar days Class III applications not requiring additional field review. Exceptions are:

(a) Multiyear applications must be approved or disapproved within ~~((45))~~ forty-five days of receipt of ~~((an))~~ a complete application by the department.

(b) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(4) **Class IV forest practices** are divided into "Class IV - special," and "Class IV - general," and must be approved or disapproved within ~~((30))~~ thirty calendar days of receipt of ~~((an))~~ a complete application by the department(~~(-except that if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required))~~). Exceptions are:

(a) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(b) If a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(5) In certain emergencies as defined in RCW 7.09.060 (7), the application or notification may be submitted within forty-eight hours after commencement of the practice.

NEW SECTION

WAC 222-12-035 *Small forest landowner long-term applications. In order to facilitate flexibility for small forest landowners in the timing of their forest practices activities, the department will receive, and approve or disapprove, long-term forest practices applications. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications unless proposing a conversion to a use other than commercial timber production. An approved long-term application will be effective for a term of three to fifteen years at the discretion of the landowner. These applications may contain alternate plans for all or portions of the forest land area included in the long-term application. Alternate plan portions of long-term applications will be reviewed according to the alternate plan process described in WAC 222-12-0401. The process for small forest landowner long-term applications is described in WAC 222-20-016.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-0401 *Alternate plans—Process. (1) Application. A landowner may submit an alternate plan that departs from the specific provisions of chapters 222-22 through 222-38 WAC for any or all of the activities described in the application. Alternate plans must be submitted with ~~((either))~~ a two-year ~~((or))~~ multiyear_ or small forest landowner long-term application. Alternate plans may support a single forest practices application or multiple applications if the sites included in the plan have sufficient common physical characteristics and elements to justify being considered together. See board manual section 21.

(2) Plan preparation. The landowner is responsible for preparing and submitting an alternate plan. Small forest landowners may wish to seek the assistance of the small forest landowner office. See WAC 222-12-0402.

(3) Contents of alternate plans. Alternate plans must contain all of the following:

(a) A map of the area covered, at a scale acceptable to the department showing the location of any affected streams and other waters, wetlands, unstable slopes, and existing roads. The map must also show the location of proposed road construction, timber harvest, and other forest practices;

(b) A description of how the alternate plan provides public resource protection to meet the approval standard, including a description of the proposed alternate management strategy, prescriptions, and where applicable, aquatic resource enhancements;

(c) A list of the forest practices rules that the alternate management plan is intended to replace;

(d) Where applicable, descriptions of monitoring and adaptive management strategies, including landowner plans for annual performance reviews;

(e) Where applicable, descriptions of an implementation schedule; and

(f) When multiple forest practices applications are submitted with the same alternate plan or when an alternate plan has been used for previous applications, justification that the sites included in the plan share sufficient common physical characteristics and elements to be considered together.

(4) Review of proposed plan. Upon receipt of a forest practices application together with an alternate plan, the department will do all of the following:

(a) Appoint an interdisciplinary team.

(b) Establish a deadline for completion of the interdisciplinary team review that is consistent with the requirements of subsection (5) of this rule; and

(c) Within ~~((5))~~ five business days of receipt of an application with an alternate plan, provide copies of the application and alternate plan to the departments of ecology and fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other parties that have expressed an interest in alternate plans in the area of the application. If the landowner is a small forest landowner under WAC 222-21-010~~((+1))~~(13), copies should also be provided to the small forest landowners office.

(5) Interdisciplinary team.

(a) The department will determine the members invited to participate on an interdisciplinary team. Teams will include members with the qualifications necessary to evaluate the alternate plan. A representative of any affected Indian tribe, and departments of ecology and fish and wildlife will be invited to participate. Each team will include a representative of the landowner and a professional forester employed by the department and shall be led by a department employee.

(b) The interdisciplinary team will conduct a site visit and submit a recommendation to the department at least ~~((3))~~ three days prior to the expiration of the application time limit in WAC 222-20-020. The interdisciplinary team may submit a recommendation without a site visit if a small forest landowner under WAC 222-21-010~~((+1))~~(13) submitted the alternate plan using a template contained in ~~((the))~~ board manual section 21 and is a low impact alternate plan and the team determines a visit is not necessary to evaluate the site specific application of a template or a low impact alternate plan.

(c) The recommendation of the interdisciplinary team shall indicate whether the alternate plan meets the approval standard, or what revisions are necessary to meet the approval standard. The team is intended to work with the landowner in an attempt to reach consensus on the efficacy of the alternate plan. In the absence of consensus, the team will forward reports reflecting the majority and minority opinions, or the landowner may elect to withdraw or revise the proposal.

(6) Approval standard. An alternate plan must provide protection for public resources at least equal in overall effectiveness to the protection provided in the act and rules.

(7) Approval, conditions, or disapproval. Upon receipt of the interdisciplinary team's recommendation, the department

shall determine whether to approve, disapprove, or condition the application based on the approval standard. The department shall give substantial weight to the recommendations of the interdisciplinary team in cases where a consensus recommendation is forwarded. If the department disapproves or conditions a forest practices application with an alternate plan, the department will provide a written statement to the landowner explaining why the application was conditioned or denied.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-0402 *Assistance available for small forest landowners. (1) The small forest landowner office has been established within the department to be a resource and focal point for small forest landowner concerns and policies. A small forest landowner is defined in WAC 222-21-010 ~~((+1))~~(13). The legislature recognized that the further reduction in harvestable timber owned by small forest landowners would further erode small forest landowner's economic viability and willingness or ability to keep the lands in forestry use, and, therefore, reduced the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature has directed that office to assist small forest landowners in preparing alternate plans appropriate to small forest landowners. See RCW 76.13.100 and 76.13.110(3).

(2) Small forest landowners interested in alternate plans are encouraged to contact the small forest landowner office for assistance in preparing an alternate plan. The office may provide technical assistance in understanding and using ~~((the))~~ board manual section 21 for alternate plans ~~((section 2+))~~, assistance in developing an individualized alternate plan for the small forest landowner and facilitation of small forest landowner interactions with the department, other state agencies, federal agencies, affected Indian tribes and the interdisciplinary team that may review the small forest landowner's alternate plan.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-20-010 Applications and notifications—Policy. (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Except as provided in subpart (4) below, applications and notifications** shall be signed by the landowner, the timber owner and the operator, or the operator and accompa-

nied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)).

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(6) **Transfer of the** approved application or notification to a new landowner, timber owner or operator requires written notice by the ~~((original))~~ former landowner or ~~((applicant))~~ timber owner to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(7) ~~((Applications and notifications must be delivered to the department at the appropriate region office. Delivery should be in person or by registered or certified mail.~~

~~((8))~~ Applications and notifications ~~((shall)),~~ if complete, will be considered officially received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. The department will immediately provide a dated receipt to the applicant. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(a) A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the CRGNSA special management area guidelines is necessary information for an application or notification within the

CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Service received a complete plan application and failed to act within ~~((45))~~ forty-five days.

(b) An environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications.

(c) A local governmental entity clearing and/or grading permit is necessary information for all Class IV applications on lands that have been or will be converted to a use other than commercial timber production or on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW, if the local governmental entity has jurisdiction and has an ordinance requiring such permit.

(d) A checklist road maintenance and abandonment plan is necessary information for all small forest landowners' applications or notifications for timber harvest (including salvage), unless exempt under WAC 222-24-0511, or unless the application is a small forest landowner long-term application which requires a roads assessment. ~~((If a notification or application is delivered in person to the department by the operator or the operator's authorized agent, the department shall immediately provide a dated receipt. In all other cases, the department shall immediately mail a dated receipt to the applicant.~~

~~((9))~~ (8) An operator's name, if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within ~~((48))~~ forty-eight hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

~~((10))~~ (9) Financial assurances may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-20-015 Multiyear permits. (1) Where a watershed analysis has been approved for a WAU under WAC 222-22-080, landowner(s) may apply for a multiyear permit. The information provided and level of detail must be comparable to that required for a two-year permit. At a minimum, the application must include:

(a) A description of the forest practices to be conducted during the period requested for the permit, and a map(s) showing their locations; and

(b) Prescriptions must be identified where operations are proposed within or include areas of resource sensitivity.

(2) A landowner with an approved road maintenance and abandonment plan (other than a checklist) may apply for a multiyear permit to perform road maintenance~~((+))~~, road abandonment, and/or associated right of way timber harvest,

if the schedule for implementing the plan is longer than two years.

(3) A landowner may apply for a multiyear permit to perform an approved alternate plan.

NEW SECTION

WAC 222-20-016 Small forest landowner long-term applications. (1) **Application.** A small forest landowner may submit a forest practices application that includes planned forest practices activities on all or part of a landowner's ownership within one of the department's geographic region boundaries. The application can be for terms of three to fifteen years at the discretion of the landowner. The landowner will submit the application to the department in two steps.

(2) **Review of proposed application.**

(a) **Step 1: Resource and roads assessment review.**

The landowner will submit the resource and roads assessment portion of the application. As part of the review, the department will determine any additional known resources or threats to public safety and initiate one or more site reviews in consultation with the department of ecology, the department of fish and wildlife, and the affected Indian tribes. The department will notify the landowner and the landowner's representative to attend the site review(s). Within forty-five days of receiving the complete assessment, the department will notify the landowner in writing of its validation or rejection of the assessment. If rejected, the department will provide a written statement to the landowner explaining why the assessment was rejected.

(b) **Step 2: Resource protection strategies review.**

The department will accept for review the resource protection strategies portion of the long-term application after the department validates Step 1. The required elements of Step 2 will include a description of proposed forest practices activities and strategies for protection of all resources identified in Step 1. The department will approve, condition, or disapprove Step 2 within forty-five days of receiving the complete Step 2 portion, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required. If disapproved, the department will provide a written statement to the landowner explaining why the proposed strategies were disapproved.

(3) **Activity notice.** At least five business days before a landowner starts an approved forest practices activity the landowner will submit to the department an activity notice in a format acceptable to the department.

(4) **Amendments to long-term applications.**

(a) The department may authorize nonsubstantial amendments as authorized in WAC 222-20-060.

(b) If the board considers new or amended rules to achieve resource protection objectives, the department and the board will do the following regarding existing approved long-term applications:

(i) The department, in consultation with the departments of ecology, fish and wildlife, and affected Indian tribes will review, and if necessary analyze the effects of approved long-

term applications on the public resources the proposed rules are intended to protect.

(ii) The department will report the results of its review and/or analysis to the board prior to rule adoption.

(iii) Upon rule adoption, the board may direct the department to condition existing approved long-term applications to protect resources.

(iv) The department will notify impacted landowners in writing of the board's decision.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-020 Application time limits. (1) ~~((A properly completed application shall be approved, conditioned or disapproved))~~ When the department officially receives an application, the department will approve, condition or disapprove it within ~~((30))~~ thirty calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For "Class IV" applications when the department or the lead agency has determined that a detailed environmental statement must be made, the application must be approved, conditioned or disapproved within ~~((60))~~ sixty days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least ~~((40))~~ ten days before promulgation of such an order extending the time, the applicant shall be given written notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands described in (c)(i) through (iv) of this subsection, the applicable time limit shall be no less than ~~((14))~~ fourteen business days from transmittal to the local governmental entity unless the local governmental entity has waived its right to object or has consented to approval of the application:

(i) Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(ii) Lands that have been or are being converted to another use;

(iii) Lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-24-050); or

(iv) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW.

(d) Applications for multiyear permits will be approved, conditioned, or disapproved within forty-five days of the department receiving a complete application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(e) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016. The department will review Step 1 and issue a decision

within forty-five days of receiving a complete resource and roads assessment. The department will review and approve, condition, or disapprove Step 2 within forty-five days of receiving a complete resource protection strategies portion of the long-term application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(2) **Unless the local governmental entity** has waived its rights under the act or consents to approval, the department shall not approve an application involving lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands that have been or are being converted to another use until at least ~~((14))~~ fourteen business days from the date of transmittal to the local governmental entity.

(3) **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices rules, no penalty should be imposed for those operations which occurred prior to the enforcement action: Provided, That no damage to a public resource resulted from such operations, and the operations commenced more than ~~((5))~~ five days from receipt by the department of the notification.

(4) **If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may commence except that this provision shall not apply where:

(a) The local governmental entity objects and the application involves lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands that have been or are being converted where the county's right of objection is ~~((14))~~ fourteen business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

(5) **If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

~~((6) An application for a multiyear permit must be approved, conditioned or disapproved by the department within 45 days of receiving a complete application.))~~

AMENDATORY SECTION (Amending Order 551, Resolution No. 88-1, filed 9/21/88, effective 11/1/88)

WAC 222-20-030 Delivery of notifications and applications—Receipts—File numbers. (1) **Notifications and applications** should be delivered ~~((in person or by registered or certified mail))~~ to the department at the appropriate region office. Notifications and applications actually received at the appropriate region office by other means may be accepted or returned to the applicant.

(2) **Upon delivery of a complete** notification or application ~~((to the appropriate region office,))~~ the department will

provide a written receipt ((for such notification or application shall be issued by the department as follows:

(a) If delivery is in person, a dated receipt shall be issued immediately to the applicant.

(b) If delivery is by registered or certified mail, a dated receipt shall be mailed immediately to the applicant.

(c) If delivery is by other means, a receipt dated on the day the department begins processing the application shall be mailed ~~to the applicant))~~ to the landowner, timber owner, and operator.

(3) **Each receipt will** indicate the file number assigned to the notification or application.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-20-040 Approval conditions. (1) **Whenever an approved** application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department ~~((2))~~ two business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(3) **Local governmental entity conditions.**

(a) RCW 76.09.240(4) allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to Class IV general applications on lands that have been or are being converted to a use other than commercial timber production or to Class IV general applications on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW.

(c) The department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department officially receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) Local governmental entity conditions shall be filed with the department within twenty-nine days of the (~~the application with the~~) department's official receipt of the application or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

(4) Lead agency mitigation measures.

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under (~~SEPA~~) the State Environmental Policy Act. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department officially receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of (~~the~~) twenty-nine days of the official receipt of the application by the department, (~~the~~) fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or (~~the~~) one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must (~~deny~~) disapprove the application or require an (~~EIS~~) environmental impact statement. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall (~~deny~~) disapprove the application.

(5) Small forest landowner approval conditions. The department shall not disapprove a small forest landowner's application(~~s~~) or notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

(~~a~~) **(a)** Any barriers on their forest roads located within the boundaries of their application(~~s~~) or notification; and

(~~b~~) **(b)** Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application(~~s~~) or notification.

(6) CRGNSA special management area.

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department's Southeast and Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-050 Conversion to nonforest use. (1) If an application to harvest signed by the landowner indicates that within (~~3~~) three years after completion, the forest land will be converted to a specified active use which is incompatible with timber growing, the reforestation requirements of these rules shall not apply and the information relating to reforestation on the application form need not be supplied. However, if such specified active use is not initiated within (~~3~~) three years after such harvest is completed, the reforestation requirements (see chapter 222-34 WAC) shall apply

and such reforestation shall be completed within ~~((+))~~ one additional year.

(2) For Class II, III, and IV special forest practices, if a landowner wishes to maintain the option for conversion to a use other than commercial timber ~~((operation))~~ growing, the landowner may request the appropriate local governmental entity to approve a conversion option harvest plan. This plan, if approved by the local governmental entity and followed by the landowner, shall release the landowner from the six-year moratorium on future development, but does not create any other rights. The conversion option harvest plan shall be attached to the application or notification as a condition. Violation of the conversion option harvest plan will result in the reinstatement of the local governmental entity's right to the six-year moratorium. Reforestation requirements will not be waived in the conversion option harvest plan. Reforestation rules shall apply at the completion of the harvest operation as required in chapter 222-34 WAC. Nothing herein shall preclude the local governmental entity from charging a fee to approve such a plan. (See RCW 76.09.060 (3)(b)(i).)

(3) If the application or notification does not state that any land covered by the application or notification will be or is intended to be converted to a specified active use incompatible with commercial timber ~~((operations))~~ growing, or if the forest practice takes place without a required application or notification, then the provisions of RCW 76.09.060 (3)(b)(i) regarding the six-year moratorium apply.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-060 Deviation from prior application or notification. Substantial deviation from a notification or an approved application requires a ~~((revised))~~ new notification or application. Other deviations may be authorized by a supplemental directive, notice to comply or stop work order. The department shall notify the departments of fish and wildlife, and ecology, and affected Indian tribes and the appropriate local governmental entity of any supplemental directive, notice to comply or stop work order involving a deviation from a prior notification or approved application, except where such notice has been waived.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-080 Application and notification expiration. (1) The approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval, with the following exceptions ~~((of multiyear permits))~~:

(a) Multiyear permits are effective for ~~((up))~~ three to five years. ~~((The))~~ A multiyear permit for lands included in a watershed analysis pursuant to chapter 222-22 WAC is not renewable if a five-year watershed analysis review is found necessary by the department and has not been completed.

(b) Small forest landowner long-term applications are effective for terms of three to fifteen years.

(2) A notification is ~~((also))~~ effective for a term of two years beginning five days from the date ~~((of receipt))~~ it is officially received.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-100 Notice to parks and ~~((DAHP))~~ DAHP. (1) **Notice to parks.** The department shall send to the affected agency, within ~~((2))~~ two business days of receipt, a copy of any notification or application for forest practices within ~~((500))~~ five hundred feet of the boundary of any park entity registered according to subsection (2) of this section.

(2) **Parks register.** The department shall establish and update every ~~((5))~~ five years a parks register listing all publicly owned parks where the affected owner has filed a written request with the department for inclusion on such register. The department shall notify owners of all public parks inventoried on the state comprehensive outdoor recreation plan (SCORP) of the opportunity to register.

(3) **DNR to provide information to ~~((DAHP))~~ DAHP.** The department shall provide the ~~((office))~~ department of archaeology and historic preservation ~~((DAHP))~~ DAHP with copies of all applications and notifications for forest practices to be conducted on lands known to contain historic sites or archaeological resources as identified by ~~((DAHP))~~ DAHP.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-20-120 Notice of forest practices to affected Indian tribes. (1) The department shall notify affected Indian tribes of all applications of concern to such tribes, including those involving cultural resources, identified by the tribes.

(2) Where an application involves cultural resources the landowner shall meet with the affected tribe(s) with the objective of agreeing on a plan for protecting the archaeological or cultural value. The department may condition the application in accordance with the plan.

(3) Affected Indian tribes shall determine whether plans for protection of cultural resources will be forwarded to the ~~((office))~~ department of archaeology and historic preservation ~~((DAHP))~~ DAHP.

AMENDATORY SECTION (Amending WSR 06-17-128, filed 8/21/06, effective 9/21/06)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"**Act**" means the Forest Practices Act, chapter 76.09 RCW.

"**Affected Indian tribe**" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"**Alluvial fan**" see "sensitive sites" definition.

"**Appeals board**" means the forest practices appeals board established in the act.

"**Aquatic resources**" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander

(*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060 (2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

"Board" means the forest practices board established by the act.

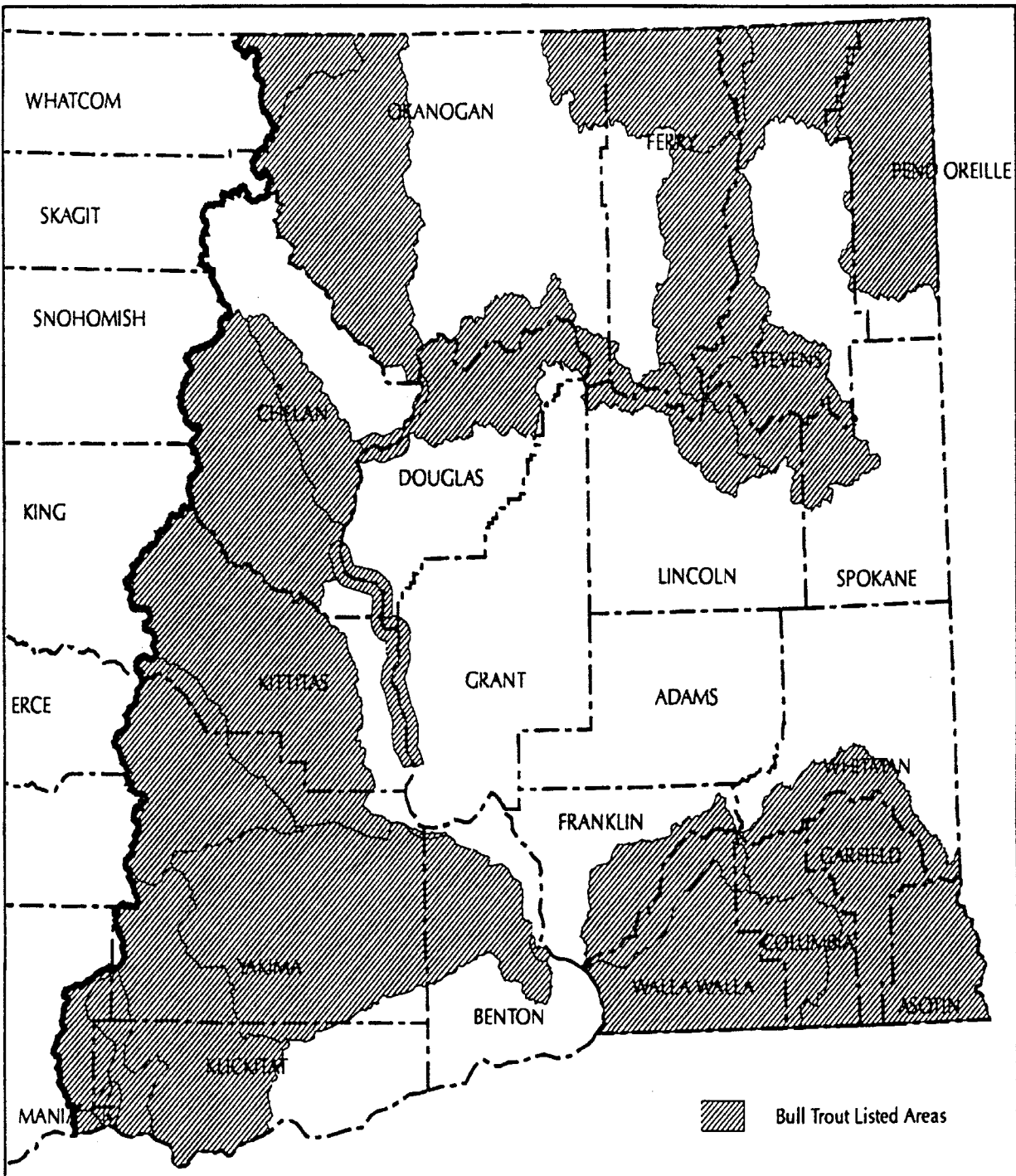
"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that

are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local

governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

- Clearcuts;
- Seed tree harvests in which twenty or fewer trees per acre remain after harvest;
- Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;
- Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;
- Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;
- Partial cutting in which fewer than fifty trees per acre remain after harvest;
- Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and
- Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting

green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than

15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Horizontal distance" means the distance between two points measured at a ((0%)) zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

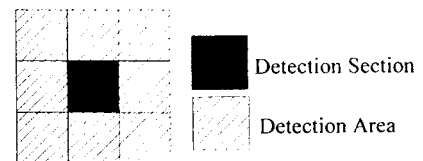
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means:

(1) Until June 30, 2007, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After June 30, 2007, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is

distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long con-

tinued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area along-side Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the ~~((30))~~ thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:
 - Maintaining, replacing, and installing drainage structures;
 - Controlling road-side vegetation;
 - Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least ~~((40%))~~ forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance with WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.-035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-16-050 *Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices rules.

(1) **"Class IV - special."** Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the bound-

aries of any national park, state park, or any park of a local governmental entity, except harvest of less than ~~((5))~~ five MBF within any developed park recreation area and park managed salvage of merchantable forest products.

*~~(d)~~ Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See ~~((the))~~ board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than ~~((35))~~ thirty-five degrees ~~((70%))~~ seventy percent;

(B) Toes of deep-seated landslides, with slopes steeper than ~~((33))~~ thirty-three degrees ~~((65%))~~ sixty-five percent;

(C) Ground water recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application~~((/))~~ or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports or other information provided by the applicant.

(iii) An application would not be classified as Class IV-Special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with an approved prescription from the watershed analysis (or as modified through the ~~((5))~~ five-year review process); and

(C) The applicable prescription is specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

*~~(e)~~ Timber harvest, in a watershed administrative unit not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state ~~((office))~~ department of archaeology and historic

preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.

*~~(g)~~ Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

*~~(h)~~ Filling or draining of more than 0.5 acre of a wetland.

(2) "**Class IV - general.**" Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special."

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(b) Forest practices (other than those in Class I) on lands that have been or are being converted to another use;

(c) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(d) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest products operations for ten years accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the ~~((State Environmental Policy Act))~~ SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037 (2). Such applications are subject to a ~~((30))~~ thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with the ~~((State Environmental Policy Act))~~ SEPA.

(3) "**Class I.**" Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*~~(b)~~ Road maintenance except: ~~((+))~~ Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or ~~((+))~~ movement of material that has a direct

potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

*(c) Construction of landings less than ~~((1))~~ one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(d) Construction of less than ~~((600))~~ six hundred feet of road on a sideslope of ~~((40))~~ forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than ~~((5,000))~~ five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any ~~((12))~~ twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding ~~((40))~~ forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than ~~((40))~~ forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within ~~((100))~~ one hundred feet of lands used for farming, or within ~~((200))~~ two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

*(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor

or wheeled skidding systems on a sideslope of greater than ~~((40))~~ forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) "**Class II.**" Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 77.55.100) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands that have been or are being converted to another use. No forest practice enumerated below involving timber harvest or road construction may be conducted as a "Class II" if it takes place within urban growth areas designated pursuant to chapter 37.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

(iv) Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary ~~((5))~~ five-year review of the watershed analysis.

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than ~~((1))~~ one acre.

*(d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than ~~((40))~~ forty percent.

*~~(e)~~ Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than ~~((40))~~ forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of ~~((40))~~ forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of ~~((5,000))~~ five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than ~~((40))~~ forty percent of the total timber volume is removed in any ~~((12))~~ twelve-month period.

(iv) Any harvest on less than ~~((40))~~ forty acres.

(v) Construction of ~~((600))~~ six hundred or more feet of road, provided that the department shall be notified at least ~~((2))~~ two business days before commencement of the construction.

(5) "**Class III.**" Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 77.55.100).

*~~(b)~~ Those within the shorelines of the state other than those in a Class I forest practice.

*~~(c)~~ Aerial application of insecticides, except where classified as a Class IV forest practice.

*~~(d)~~ Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

*~~(e)~~ Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

*~~(f)~~ All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

*~~(h)~~ Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:

(i) On or are eligible for listing on the National Register of Historic Places; or

(ii) Have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding ~~((19))~~ nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

*~~(n)~~ Any filling of wetlands, except where classified as Class IV forest practices.

*~~(o)~~ Multiyear permits.

*~~(p)~~ Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.

WSR 07-20-047

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed September 26, 2007, 3:07 p.m., effective October 27, 2007]

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

Purpose: Allows individuals to count a school counselor national board for professional teaching standards certificate in lieu of the school counselor professional certificate and properly aligns the timelines of the professional certificate.

Citation of Existing Rules Affected by this Order: Amending 181-79A-145, 181-79A-250, and 181-79A-257.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-16-052 on July 25, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

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

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

Date Adopted: September 12, 2007.

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-12-006, filed 5/24/07, effective 6/24/07)

WAC 181-79A-145 Levels and validity of certificates.

Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31,

2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has lapsed or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors, school psychologists, and school social workers no later than September 1, 2005.

(b) ~~((The residency certificate for principals, program administrators, and educational staff associates is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250 (2)(b) and (c)).~~

~~(c) The first issue of a residency certificate for teachers employed in a school district or state agency that provides educational services for students shall be valid until the holder is no longer on provisional status. When the teacher for the first time in their career completes provisional status, their residency certificate will be reissued with a five year expiration date. Prior to the expiration date, the teacher must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).~~

~~(d) The first issue of a residency certificate for teachers employed in a state approved private school shall be valid until the holder has completed two years of successful teaching. When the teacher for the first time in their career completes two years of successful teaching, their residency certificate will be reissued with a five year expiration date. Prior to the expiration date, the teacher must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).~~

~~(e))~~ The first issue of a residency certificate for teachers, principals, program administrators, and educational staff associates shall be valid until the holder has completed two

~~((successful))~~ consecutive years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students. When the teacher, principal, program administrator, or educational staff associate ~~((for the first time in their career))~~ completes two consecutive years of successful service in ~~((a school district, state approved private school, or state agency))~~ the role in the state with the same employer, their residency certificate will be reissued with a five-year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(b) and (c).

~~((c))~~ (c) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors, school psychologists, and school social workers beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language/culture certificates: The first peoples' language/culture certificate will be issued beginning in January 2007. The first peoples' language/culture certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Initial and residency certificates. The initial certificate (residency certificate for teachers after August 31, 2000,) shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who passes the WEST-B and meets one of the following:

(a) Qualifies under provisions of the interstate compact.

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state approved preparation program at a regionally accredited college or university in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4).

(c) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) or (b) of this subsection, an initial/residency certificate shall be issued to a candidate who holds an appropriate degree from a regionally accredited college or university and also holds or has held a certificate in the role, comparable to an initial/residency certificate, issued by another state and has practiced at the P-12 level in that respective role outside the state of Washington for three years: Provided further, That the teacher preparation program through which the teacher earned their teaching certificate included a supervised classroom-based internship.

(d) Provided further, That if a candidate for a teacher's certificate would qualify under (b) of this subsection, but for the fact that he or she has completed an approved teacher preparation program in a subject area that is not listed in chapter 181-82 WAC as a Washington endorsement, the candidate shall be issued a certificate that bears the out-of-state area of program preparation. It shall be noted on the certificate so issued that the subject area listed is not a Washington state endorsement.

(e) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(f) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) Continuing certificate. The continuing certificate shall be issued to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

(3) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the

candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

(iv) Individuals who complete the requirements in their school district professional growth plan may use that completed plan to maintain the continuing certificate or renew the professional certificate.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(d) Renewals based on conditions other than those described in WAC 181-79A-250 (2)(a) and (b) may be appealed to the professional educator standards board, or its designated appeals committee. The following conditions apply to such appeals:

(i) Individuals who appeal shall present a rationale and evidence to support their request to have their residency certificates renewed.

(ii) The professional educator standards board, or its designated appeals committee, in making its decision shall determine the length of the renewal and may establish specific conditions (such as course work requirements) as prerequisites for the reissuance of the residency certificate.

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in RCW 28A.415.023.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five year periods for individuals employed as a principal, assistant principal or program administrator in a public school or professional educator standards board-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning;

(III) Relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b);

(IV) Explicitly connect to the evaluation process;

(V) Reflect contributions to the school, district, and greater professional community; and

(VI) Identify areas in which knowledge and skills need to be enhanced.

(B) Verification of satisfactory performance evaluations for the five year periods; and

(C) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, professional educator standards board-

approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

(III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or professional educator standards board-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.

WSR 07-20-048

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 26, 2007, 3:09 p.m., effective November 1, 2007]

Effective Date of Rule: November 1, 2007.

Purpose: The health and recovery services administration (HRSA) is incorporating into rule HRSA's chronic care management (CCM) program. The rule describes program goals and eligibility requirements, and lays out program parameters for contractors, enrollees and providers. The rule impacts chronically ill DSHS clients who are enrolled in the program by attempting to improve their health outcomes.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Other Authority: Section 4, chapter 259, Laws of 2007.

Adopted under notice filed as WSR 07-15-089 on July 18, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-557-0200 (3)(d) May request disenrollment at any time. Disenrollment is effective the first day of the following month; and (e) May request re-enrollment at any time. Re-enrollment is effective the first day of the following month.

WAC 388-557-0200(4) A participating client who subsequently enrolls in a DSHS voluntary managed care ~~organization (MCO) plan program~~ is no longer eligible for chronic care management program services. ~~The participating client is not exempted from mandatory enrollment in an MCO plan under chapter 388-538 WAC and:~~

~~(a) Is no longer eligible for chronic care management program services;~~

~~(b) Is not eligible for an enrollment exemption from the MCO plan because of the existing relationship with an SCM or LCM care manager; and~~

~~(c) May be exempt from mandatory enrollment in the MCO plan only under the provisions of chapter 388-535 WAC.~~

A final cost-benefit analysis is available by contacting Alison Robbins, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-634 [(360) 725-1634], fax (360) 753-7315, e-mail robbia@dshs.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 0, Repealed 0.

Date Adopted: September 26, 2007.

Robin Arnold-Williams
Secretary

Chapter 388-557 WAC

CHRONIC CARE MANAGEMENT

NEW SECTION

WAC 388-557-0050 Chronic care management program—General. (1) The department's chronic care management program:

(a) Offers care management and coordination activities for medical assistance clients determined to be at risk for high medical costs;

(b) Provides education, training, and/or coordination of services for program participants through statewide care

management (SCM) and local care management (LCM) providers contracted with DSHS;

(c) Assists program participants in improving self-management skills and improving health outcomes; and

(d) Reduces medical costs by educating clients to better utilize healthcare services.

(2) The department's chronic care management program does not:

(a) Change the scope of services available to a client eligible under a Title XIX medicaid program;

(b) Interfere with the relationship between a participant (client) and the client's chosen department-enrolled provider(s);

(c) Duplicate case management activities available to a client in the client's community; or

(d) Substitute for established activities that are available to a client and provided by programs administered through other DSHS divisions or state agencies.

(3) Chronic care management program services provided by a statewide care management (SCM) contractor and a local care management (LCM) contractor must meet:

(a) The conditions of the contract between DSHS and the contractor; and

(b) Applicable state and federal requirements.

(4) The SCM contractor uses a predictive modeling program to review DSHS claims, and eligibility data to identify clients eligible to participate in the chronic care management program.

NEW SECTION

WAC 388-557-0100 Chronic care management program—Definitions. The following terms and definitions apply to the chronic care management program:

"Chronic care management program services" are services provided by DSHS-contracted organizations to clients with multiple health, behavioral, and social needs in order to improve care coordination, client education, and client self-management skills.

"Evidence-based healthcare practice" means a clinical approach to practicing medicine based on the clinician's awareness of evidence and the strength of that evidence to support the management of a disease treatment process.

"Local Care Management program" or **"LCM program"** means a comprehensive care management program and medical home program for medical assistance clients (participants) that serves a specific geographical area of the state.

"Local Care Management (LCM) contractor" means an entity or group of entities that contracts with DSHS to provide chronic care management program services to eligible participants (clients).

"Medical home" means an approach to providing healthcare services in a high-quality and cost-effective manner that is accessible, family-centered, comprehensive, continuous, coordinated, compassionate, and culturally competent.

"Participant" means a medical assistance client who has been contacted by an SCM or LCM, and has agreed to participate in the chronic care management program.

"Predictive modeling" means using historical medical claims data to predict future utilization of medical services.

"Self-management" means, with guidance from a healthcare team, the concept of a medical assistance client being the "driver" of their own healthcare to improve their healthcare outcome through:

- Education;
- Monitoring;
- Adherence to evidence-based guidelines; and
- Active involvement in the decision-making process with the team.

"Statewide Care Management program" or "SCM program" means a comprehensive care management program for clients that serves all areas of the state not served by a local care management (LCM) program.

"Statewide Care Management (SCM) contractor" means an entity that contracts with DSHS to provide chronic care management program services to eligible medical assistance clients (participants). The SCM contractor provides client identification and referral to appropriate local care management (LCM) programs through predictive modeling.

NEW SECTION

WAC 388-557-0200 Chronic care management program—Client eligibility and participation. (1) To be a participant in the chronic care management program, a client must:

(a) Be a recipient of the supplemental security income (SSI) program or general assistance with expedited medical categorically needy (GAX) program;

(b) Be identified through predictive modeling as being high risk for high medical costs as a result of needing medical treatment for multiple conditions; and

(c) Agree to participate in the program.

(2) A client participating in the chronic care management program must not be:

(a) Receiving medicare benefits;

(b) Residing in an institution, as defined in WAC 388-500-0005, for more than thirty days;

(c) Eligible for third party coverage that provides care management services or requires administrative controls that would duplicate or interfere with the department's chronic care management program;

(d) Enrolled with a managed care organization (MCO) plan contracted with DSHS;

(e) Currently receiving long term care services; or

(f) Receiving case management services that chronic care management program services would duplicate.

(3) Using data provided by DSHS, the statewide care management (SCM) contractor identifies medical assistance clients who are potential participants for chronic care management program services. A client who meets the participation requirements in this section:

(a) Will be served by the SCM program or a local care management (LCM) program, based on the geographical area of the state the client resides.

(b) Will be contacted by an SCM or LCM care manager for an assessment and enrollment in the program;

(c) Will not be enrolled unless the client specifically agrees to the enrollment;

(d) May request disenrollment at any time. Disenrollment is effective the first day of the following month; and

(e) May request re-enrollment at any time. Re-enrollment is effective the first day of the following month.

(4) A participating client who subsequently enrolls in a DSHS voluntary managed care program is no longer eligible for chronic care management program services.

(5) A client who meets the eligibility and enrollment criteria for participation in the chronic care management services program:

(a) Is eligible to participate for six months from the date of enrollment provided the client continues to meet eligibility and enrollment criteria; and

(b) May participate for additional six-month participation periods if both the department and the SCM or LCM contractor determine that the participant's self-management skills and healthcare outcome would benefit.

(6) A client who does not agree with a decision regarding chronic care management program services has a right to a hearing under chapter 388-02 WAC.

NEW SECTION

WAC 388-557-0300 Chronic care management program services—Confidentiality and data sharing. (1) Statewide care management (SCM) and local care management (LCM) contractors must meet the confidentiality and data sharing requirements that apply to clients eligible under Title XIX medicaid programs and as specified in the chronic care management contract.

(2) DSHS shares healthcare data with SCM and LCM contractors under the provisions of RCW 70.02.050 and the health insurance portability and accountability act of 1996 (HIPAA).

(3) DSHS requires SCM and LCM contractors to monitor and evaluate participant activities and provide to the department:

(a) Any client information collected; and

(b) Any data compiled as the result of the program.

NEW SECTION

WAC 388-557-0400 Chronic care management program services—Payment. Only a DSHS-contracted statewide care management (SCM) and local care management (LCM) program may bill and be paid for providing the chronic care management program services described in chapter 388-557 WAC. Billing requirements and payment methodology are described in the contract between DSHS and the contractor.

WSR 07-20-049
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 26, 2007, 3:09 p.m., effective November 1, 2007]

Effective Date of Rule: November 1, 2007.

Purpose: The health and recovery services administration (HRSA) is amending chapter 388-530 WAC, Pharmacy services. A complete reorganization of the pharmacy chapter is necessary prior to the implementation of the new ProviderOne point-of-sale system. Changes include:

- Organizing the sections in a logical order,
- Removing redundant or outdated sections,
- Clarifying the existing language,
- Eliminating circular references,
- Clarifying department coverage and authorization rules,
- Updating WAC references.

See Reviser's note below.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-530-1100, 388-530-1125, 388-530-1150, 388-530-1200, 388-530-1250, 388-530-1260, 388-530-1270, 388-530-1280, 388-530-1290, 388-530-1300, 388-530-1350, 388-530-1360, 388-530-1400, 388-530-1405, 388-530-1410, 388-530-1425, 388-530-1450, 388-530-1500, 388-530-1550, 388-530-1600, 388-530-1625, 388-530-1650, 388-530-1700, 388-530-1750, 388-530-1800, 388-530-1850, 388-530-1900, 388-530-1950, and 388-530-2050; and amending WAC 388-530-1000 and 388-530-1050.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700.

Adopted under notice filed as WSR 07-11-141, 07-11-142, 07-11-143, and 07-11-144 on May 22, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

A final cost-benefit analysis is available by contacting Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1564, fax (360) 586-9727, e-mail childsa@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 31, Amended 2, Repealed 29.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 31, Amended 2, Repealed 29.

Date Adopted: September 26, 2007.

Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-22 issue of the Register.

WSR 07-20-050

PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 26, 2007, 3:09 p.m., effective October 27, 2007]

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

Purpose: The division of developmental disabilities (DDD) has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act. These amendments also respond to the proposed order and settlement agreement under *Boyle v. Arnold-Williams* and incorporate the provisions of the letter of agreement between the state of Washington (office of financial management) and the Service Employees International Union (SEIU). Finally these rules are necessary to implement the recommendations in a June 2003 performance audit by the joint legislative audit and review committee. When effective, these rules replace the emergency rules filed as WSR 07-19-132.

Citation of Existing Rules Affected by this Order: See Reviser's note below.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 07-11-130 on May 22, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

Additionally, WAC 388-845-1605 will not be adopted at this time but will be repropoed and adopted as a permanent rule at a later time.

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksk@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 6, Amended 50, Repealed 16; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 50, Repealed 16.

Date Adopted: September 26, 2007.

Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-22 issue of the Register.

WSR 07-20-059
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket UE - 060649, General Order 545—Filed September 27, 2007, 3:22 p.m., effective October 28, 2007]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-21 issue of the Register.

WSR 07-20-065
PERMANENT RULES
SECRETARY OF STATE

[Filed September 28, 2007, 12:19 p.m., effective October 29, 2007]

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

Purpose: Establish fees and agency procedures for registration of state registered domestic partnerships under chapter 26.60 RCW. Add to our list of services a statement that corporations division acts as agent for service of process in some cases involving motor vehicle theft under RCW 9A.56.078. Repeal two sections of WAC duplicated in previous WAC revisions.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-110-060 and 434-110-075; and amending WAC 434-112-010, 434-112-085, and 434-112-090.

Statutory Authority for Adoption: RCW 43.07.400.

Other Authority: RCW 9A.56.078.

Adopted under notice filed as WSR 07-17-177 on August 22, 2007.

Changes Other than Editing from Proposed to Adopted Version: No changes except to replace citations to sessions laws with citations to the laws as codified in the Revised Code of Washington.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 2.

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

Date Adopted: September 28, 2007.

Steve Excell
Assistant Secretary of State

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

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

(2) The corporations program provides the following services:

(a) Business filings under chapters 18.100, 23.78, 23.86, 23.90 RCW, and Titles 23B and 25 RCW;

(b) Nonprofit organization filings under Title 24 RCW;

(c) Trademark registration under chapter 19.77 RCW;

(d) Certification authority licensing under chapter 19.34 RCW, the Electronic Authentication Act;

(e) Registration of international student exchange programs under chapter 19.166 RCW;

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

(g) Apostilles under RCW 42.44.180;

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

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

(j) Agent for service of process for those entities and under those circumstances listed in ((~~subsection (2)~~))(a), (b), and (c) of this ((~~section~~)) subsection:

(k) Registration of state registered domestic partnerships under chapter 26.60 RCW and RCW 43.07.400.

(3) The charities program provides the following services:

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

(i) Charitable organizations;

(ii) Commercial fund-raisers; and

(iii) Fund-raising contracts;

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

(c) Publication of the trust directory; and

(d) Agent for service of process for those entities and under those circumstances listed in ((~~subsection (3)~~))(a) and (b) of this ((~~section~~)) subsection.

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

WAC 434-112-085 Fees and penalties. (1) For Washington registered profit domestic and foreign corporations, including profit cooperative associations, employee cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts and limited liability partnerships, fees and penalties are as follows:

(a) Articles of incorporation, certificates of formation, partnership agreements and other original filings, one hundred seventy-five dollars;

(b) Articles of amendment, restatement, correction, or revocation of dissolution, thirty dollars;

(c) License renewal with required annual report filed after due date and before administrative dissolution, penalty fee of twenty-five dollars, plus the statutory fee of fifty dollars and the department of licensing handling fee of nine dollars;

(d) Reinstatement, one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount;

(e) Articles of merger or exchange, twenty dollars for each listed company;

(f) Resignation of registered agent, twenty dollars;

(g) Resignation of officer or director, an initial report or amended annual report, and the appointment or change of registered agent or change of registered address, ten dollars;

(h) Registration, reservation, or transfer of name, thirty dollars;

(i) Articles of dissolution, certificate of withdrawal, dissolution by judicial decree, or revocation of certificate of authority by either failure to renew or judicial decree, no fee;

(j) Agent's consent to act as agent, agent's resignation if appointed without consent, or annual report when filed concurrently with annual license fee, no fee; and

(k) Other statement or report filed, ten dollars.

(2) For Washington registered domestic and foreign nonprofit corporations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations under Title 24 RCW, fees and penalties are as follows:

(a) Articles of incorporation and other original filings, thirty dollars;

(b) Articles of amendment, restatement, or correction, twenty dollars;

(c) Articles of dissolution or certificate of withdrawal, no fee;

(d) Revocation of dissolution, twenty dollars;

(e) Reinstatement following administrative dissolution, thirty dollars plus all delinquent annual fees and a five-dollar penalty;

(f) Articles of merger or exchange, twenty dollars for each listed corporation;

(g) Resignation of officer or director, an initial report or amended annual report, the appointment or change of registered agent, or change of registered address, ten dollars;

(h) Resignation of registered agent, twenty dollars;

(i) Registration, reservation, or transfer of reservation of name, twenty dollars;

(j) Certificate of election adopting provisions of chapter 24.03 RCW as described in RCW 24.03.017, thirty dollars; and

(k) Other statement or report filed, ten dollars.

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

(a) For a five-year registration or renewal, fifty dollars for each class in which the trademark is registered;

(b) For recording the assignment of a trademark and its registration or application for registration, ten dollars;

(c) For a new certificate with the name of the new assignee, five dollars;

(d) For reservation of a trademark for one hundred eighty days, thirty dollars for each class in which the trademark is reserved;

(e) For amendment of a trademark to add new classes of goods or services, fifty dollars for each class added by the amendment;

(f) Cancellation of trademark, no fee; and

(g) Other statement or report filed, ten dollars.

(4) For registration of a declaration of state registered domestic partnership, or registration of a notice of termination of state registered domestic partnership, fifty dollars each.

(5) Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

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

WAC 434-112-090 Miscellaneous fees. (1) For photocopies, fees are as follows:

(a) Each annual report, five dollars;

(b) ((Application for registration)) Initial articles of incorporation, initial certificate of formation, other initial organizing document or any single document, ten dollars;

(c) ((Application and amended notices)) Articles of incorporation, certificate of formation, other organizing documents including all subsequent amendments and restatements, twenty dollars;

(d) Copy of ((annual notice)) any filing related to a state registered domestic partnership, five dollars;

(e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty-page increment (number of pages determined by weight of copies);

(2) For certificates of existence fees are as follows:

(a) With complete historical data, under embossed seal, thirty dollars;

(b) Computer generated twenty dollars;

(c) Duplicate certificate twenty dollars.

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

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

(a) A ten-dollar fee for verifying the signature of a notary or public official; and

(b) A five-dollar fee for providing a certificate under seal pursuant to RCW 47.03.120 (1)(b).

((4)) (5) For each certified copy of any document the fee is ten dollars plus a ten-dollar copy fee per document.

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

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

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

NEW SECTION

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

(2) Declarations of state registered domestic partnerships, and notices of termination of state registered domestic partnerships may be submitted to the corporations division by mail, or in person. See WAC 434-112-020 for the corporations division address and hours of service.

(3) The document standards in WAC 434-112-040(5) apply to declarations of state registered domestic partnerships and to notices of termination of state registered domestic partnerships.

(4) At the time of registration of a declaration of state registered domestic partnership or of filing of a notice of termination of state registered domestic partnership the corporations division will provide to each state registered domestic partner:

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

(b) One wallet sized card documenting registration of the state registered domestic partnership.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-110-060	In-person or expedited service—Special fees.
WAC 434-110-075	Miscellaneous fees.

**WSR 07-20-066
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed September 28, 2007, 2:09 p.m., effective November 1, 2007]

Effective Date of Rule: November 1, 2007.

Purpose: To clarify that (1) equipment defects are evidence that equipment is not operated or maintained in accordance with requirements; and (2) a repair following a failed compliance test is not complete without a retest that demonstrates compliance.

To update Table 2(a) - by replacing a specific list of nozzles with a more generic description so that it's not out of date as new equipment becomes available; and Table 3 - by adding a footnote that equivalent test procedures are acceptable if they have been approved by the California Air Resources Board.

Citation of Existing Rules Affected by this Order: Amending Section 2.07 of Regulation II.

Statutory Authority for Adoption: Chapter 70.94 RCW. Adopted under notice filed as WSR 07-17-106 on August 17, 2007.

Date Adopted: September 27, 2007.

Mario Pedroza
Supervising Inspector

AMENDATORY SECTION
REGULATION II SECTION 2.07 GASOLINE DISPENSING FACILITIES

(a) Applicability

This section applies to any facility that dispenses gasoline from a stationary storage tank with a rated capacity of more than 1,000 gallons into a motor vehicle fuel tank. The provisions of this rule do not apply to any Stage 1 or Stage 2 vapor recovery system that is not required by this rule. This rule does not require the installation of any In Station Diagnostics (ISD) system.

(b) Definitions

(1) **CARB-CERTIFIED** means a Stage 1 or Stage 2 vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order (including any subsequent approval letters). However, any ISD system specified in a CARB executive order is not required.

(2) **OWNER OR OPERATOR** means a person who owns, leases, supervises, or operates a facility subject to this regulation.

(c) Stage 1 Vapor Recovery Requirements

(1) Installation Requirements

(A) Owners or operators must install a CARB-certified Stage 1 vapor recovery system on any gasoline storage tank with a rated capacity of more than 1,000 gallons that is either located at a facility where the current annual gasoline throughput is greater than 200,000 gallons or installed after January 1, 1979.

(B) Any person installing a CARB-certified Stage 1 vapor recovery system must install the system in accordance with the CARB executive order in effect on the date of installation.

(2) Maintenance Requirements

(A) All Stage 1 vapor recovery systems shall be installed, operated, and maintained in accordance with the CARB executive order in effect on the date of installation. Defects listed in Table 1(a) or 1(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(B) After June 1, 2005, all dual-point Stage 1 vapor recovery systems located at a facility required to be equipped with Stage 2 vapor recovery systems must be equipped with swivel adapters.

(3) Self-Inspection Requirements

Owners or operators must inspect each Stage 1 vapor recovery system between gasoline deliveries for the defects listed in Table 1(a) or 1(b), depending on the type of system installed, using the inspection procedures listed in the tables. However, if the facility receives more than one delivery to a tank in a day, the inspection is only required once per day.

Table 1(a)
Dual-Point Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> • Visually inspect the dust cap on both the fill and vapor risers. • Try to turn the dust cap on both the fill and vapor risers by hand. 	<ul style="list-style-type: none"> • Cap gasket is missing or damaged. • Cap is missing or damaged. • Cap turns with hand pressure.
Adapter Vapor Riser (brass fitting on tank riser)	Slowly depress poppet and check gasket and poppet alignment.	Poppet is inoperative, not aligned properly, or the gasket is damaged.
Adapter (brass fitting on tank riser) <i>(Not required for swivel adapters.)</i>	Try to turn the adapters on both the fill and vapor risers by hand.	Adapter turns with hand pressure.
Fill Tube (from adapter to bottom of tank)	Visually inspect the fill tube gasket, if clearly visible after removal of dust cap. <i>(Some fill tube assemblies may not allow observation of the fill tube gasket except by a service technician.)</i>	Fill tube gasket is damaged or missing.
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> • Liquid level is more than 1 inch. • Drain valve is open or leaking vapors.

Table 1(b)
Coaxial Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> • Visually inspect the dust cap on the fill riser. • Try to turn the dust cap on the fill riser by hand. 	<ul style="list-style-type: none"> • Cap gasket is missing or damaged. • Cap is missing or damaged. • Cap turns with hand pressure.
Adapter (brass fitting on tank riser)	Slowly depress the coaxial drop tube, check poppet gasket and poppet alignment.	Poppet is inoperative or out of alignment, poppet gasket is damaged, or spring is broken.
Adapter (brass fitting on tank riser)	Try to turn the adapter by hand.	Adapter turns with hand pressure.
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> • Liquid level is more than 1 inch. • Drain valve is open or leaking vapors.

(4) Corrective Action Requirements for Stage 1 Defects

(A) Whenever a Stage 1 defect as described in Table 1(a) or 1(b) is discovered during a self-inspection, the owner or

operator must repair it as soon as possible after the defect is discovered, but no later than the end of the next business day.

(B) If the defect cannot be repaired by the end of the next business day after discovery, the owner or operator must not receive any gasoline deliveries to the tank where the defect is located until the defect is repaired.

(5) Recordkeeping Requirements

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- date of inspection,
- name of person conducting inspection,
- description of all defects found during the inspection, and
- date and time of repair of the defects.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

(d) Stage 2 Vapor Recovery Requirements

(1) Installation Requirements

(A) Owners or operators must install a CARB-certified Stage 2 vapor recovery system on:

(i) any existing gasoline tank located at a facility where the annual gasoline throughput is greater than 600,000 gallons for facilities located in King, Pierce, or Snohomish counties and greater than 840,000 gallons for facilities located in Kitsap County; or

(ii) on any gasoline tank with a rated capacity of more than 1,000 gallons installed after August 2, 1991 at a facility where the current annual gasoline throughput is greater than 200,000 gallons.

(B) Any person installing a CARB-certified Stage 2 vapor recovery system must install the system in accordance with the CARB executive order in effect on the date of installation.

(2) Maintenance Requirements

(A) All Stage 2 vapor recovery systems installed after April 1, 2003 must be Onboard Refueling Vapor Recovery (ORVR) compatible and must be installed, operated, and maintained in accordance with the CARB executive order in effect on the date of installation. However, ISD system installation is not required. Defects listed in Table 2(a) or 2(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(B) All Stage 2 vapor recovery systems installed prior to April 1, 2003 shall be installed, operated, and maintained in accordance with the CARB executive order in effect as of April 1, 2003, even if CARB later decertifies the system. In such a case, the installation of equipment determined by the manufacturer to be interchangeable with the original approved equipment is permitted. Defects listed in Table 2(a) or 2(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(3) Self-Inspection Requirements

Owners or operators must inspect Stage 2 vapor recovery systems every day the facility is open for business for the defects listed in either Table 2(a) or 2(b), depending on the type of system installed, using the inspection procedures listed in the tables.

Table 2(a)
Vapor-Balance Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle Spout	Pull back the boot to ensure the latch ring is on the spout.	Latch ring is missing.
Nozzle	Visually inspect the boot (bellows) for holes or slits.	No boot hole shall be more than 1/4 inch diameter. No slit shall exceed 1/2 inch in length.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Nozzle	Visually inspect faceplate for missing or damaged surface area.	1/4 or more of the circumference of the bellows faceplate is damaged or missing.
Nozzle(\$ Emeo A3005 bellows A3007 bellows A4000 bellows A4001 bellows A4002 bellows A4005 bellows A4007 bellows A4015 bellows Husky V bellows OPW 111V flow 211V bellows)) (equipped with insertion interlock mechanism)	Compress the boot and note the tension on the trigger. Release the boot and note the tension on the trigger.	If the trigger is loose when the boot is compressed or the trigger is firm when the boot is released, the insertion interlock is defective.
Hose (from dispenser to nozzle) including Whip Hose	Visually inspect the hose for physical condition.	Hose has cuts, holes, is flattened, or kinked, or the fuel flow direction is incorrect (if marked on the hose).

Table 2(b)
Vacuum-Assist Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle Spout Latch Coil	Visually inspect each nozzle for missing latch coils.	Latch coil is missing.
Nozzle	Visually inspect the mini-boot (bellows) for holes or slits.	More than 1/8 of the outer edge of the mini-boot is missing, or a slit is greater than 1 1/2 inches long.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Hose (from dispenser to nozzle)	Visually inspect the hose.	Hose has cuts, holes, is flattened, or kinked, or the fuel flow direction is incorrect (if marked on the hose).

(4) Corrective Action Requirements for Stage 2 Defects

(A) Whenever a Stage 2 defect as described in Tables 2(a) or 2(b) is discovered during a self-inspection, the owner or operator must repair it as soon as possible.

(B) If the defect cannot be repaired within one hour after discovery, the defective equipment must be removed from service until the defect is repaired.

(5) Recordkeeping Requirements

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- time and date of the inspection,
- person conducting the inspection,
- a description of all defects found during the inspection, and
- time and date of repair of any defects.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

(e) Self-Inspection Training Requirements

(1) Owners or operators of facilities with Stage 2 vapor recovery systems must provide training for all employees who are responsible for performing self-inspections of the Stage 1 and Stage 2 vapor recovery equipment within 30 days of hire and provide on-site refresher training for those employees at least once every calendar year.

(2) The self-inspection training must include all of the following:

- (A) The location, function, and operation of vapor recovery equipment.
- (B) Why vapor recovery equipment must be inspected and maintained.
- (C) How to inspect vapor recovery equipment.
- (D) How to recognize a defect.
- (E) Appropriate corrective actions when defects are discovered.
- (F) How to keep the necessary records.
- (G) The penalties for noncompliance.

(3) The person providing the training must conduct the training in accordance with this section.

(4) After conducting the training required by this section, the owner or operator must prepare a written training report that includes:

- name and address of person conducting the training,
- date of the training, and
- names of the persons trained.

Owners or operators must keep a copy of the training report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

(f) Stage 2 Testing Requirements

(1) Testing Requirements

(A) Owners or operators must obtain compliance tests of vacuum-assist Stage 2 vapor recovery systems at least once every 12 months, and tests of vapor-balance Stage 2 vapor recovery systems at least once every 24 months.

(B) Each time a test is conducted, the test shall also include a review of the on-site records required by this rule including: training, self-inspections, gasoline throughput, and testing.

(C) The person performing the tests must conduct the following compliance tests for each Stage 2 vapor recovery system:

Table 3
Required Stage 2 Compliance Tests

Stage 2 Vapor Recovery Systems	CARB Tests Required	CARB Test Procedures ¹	Date of Adoption
All Vapor-Balance	Static Pressure Decay	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
All Vacuum-Assist	Static Pressure Decay	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Healy 600 G-70-165	Static Pressure Decay	TP-201.3	March 17, 1999
	Vapor Line Vacuum ((Return)) Integrity Test	G-70-165 Exhibit 4	April 20, 1995
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Healy 400 ORVR G-70-186	Static Pressure Decay	TP-201.3	March 17, 1999
	Fill Neck Pressure Test	G-70-186 Exhibit 5	October 26, 1998
	Vapor Line Vacuum Integrity Test	G-70-186 Exhibit 4	October 26, 1998
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Hirt System G-70-177-AA	Static Pressure Decay	TP-201.3	March 17, 1999
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test ²	TP-201.3C	March 17, 1999

¹Or test procedures that have been approved, by CARB, as equivalent to CARB procedures.

~~(Note:)~~ ²Tank-tie test must be conducted at least once, or after any tank configuration changes to show the tanks are manifolded. The tank-tie test records must always be kept on-site to verify compliance.

(2) Testing Procedures

(A) The person performing the tests must conduct the testing in accordance with the CARB test procedures contained in Table 3. Once each calendar year and before conducting any tests under this rule, a person performing CARB compliance tests must submit a written summary of their training and qualifications to perform the test to the Agency.

(B) The tests listed in Table 3 are exempt from the requirements of Section 3.07 of Regulation I, however persons performing such tests must notify the Agency in writing at least 72 hours prior to conducting a test to provide the Agency an opportunity to observe the test.

(3) Failed Compliance Tests

Owners or operators must notify the Agency within 24 hours of any failed compliance tests, if the defective equipment cannot be repaired or replaced by the person conducting the test on the day of the test. If the defective equipment cannot be repaired by the close of the next business day following the failed compliance test, the owner or operator must stop receiving and/or dispensing gasoline from the defective equipment until it is repaired and retested, and passes all required compliance tests. This does not include any operation of the equipment necessary to conduct a retest.

(4) Test Reports

(A) After the testing required by this section has been conducted, the owner or operator must obtain a written test report.

(B) The written report must include:

- name and address of the tester,
- date of the testing,
- equipment tested,
- test procedures used,
- results of the tests,
- any repairs or corrective actions necessary to pass the tests, and
- results of the records review, including whether the on-site records comply with the requirements of this rule.

(5) Recordkeeping Requirements for Owners and Operators

Owners or operators must keep a copy of the test report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

**WSR 07-20-067
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed September 28, 2007, 2:12 p.m., effective November 1, 2007]

Effective Date of Rule: November 1, 2007.

Purpose: To update the new WAC reference dates for certain sections that ecology has changed, to keep them consistent with the current ecology regulations.

Citation of Existing Rules Affected by this Order: Amending Section 6.01 of Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 07-17-105 on August 17, 2007.

Date Adopted: September 27, 2007.

Steve M. Van Slyke
Supervisory Engineer

AMENDATORY SECTION

REGULATION I SECTION 6.01 COMPONENTS OF NEW SOURCE REVIEW PROGRAM

(a) In addition to the provisions of this regulation, the Agency adopts by reference and enforces the following provisions of the new source review program established by the Washington State Department of Ecology:

WAC 173-400-030 Definitions. (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-081 Startup and shutdown. (effective 9/20/93)

WAC 173-400-110 (3) and (6)-(10) New source review (NSR). (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-112 Requirements for new sources in nonattainment areas. (effective 2/10/05)

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. (effective 2/10/05)

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (effective 9/15/01)

WAC 173-400-117 Special protection requirements for federal Class I areas. (effective 2/10/05)

WAC 173-400-171 Public involvement. - excluding references to chapter 173-460 WAC (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-200 Creditable stack height and dispersion techniques. (effective 2/10/05)

WAC 173-400-560 General order of approval. (effective 2/10/05)

WAC 173-400-700 Review of major stationary sources of air pollution. (effective 2/10/05)

WAC 173-400-710 Definitions. (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-720 Prevention of significant deterioration (PSD). (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (effective 2/10/05)

WAC 173-400-740 PSD permitting public involvement requirements. (effective 2/10/05)

WAC 173-400-750 Revisions to PSD permits. (effective 2/10/05)

WAC 173-460-020 Definitions. (effective 2/14/94)

WAC 173-460-040 (3)-(10) New source review. (effective 2/14/94)

WAC 173-460-050 Requirement to quantify emissions. (effective 2/14/94)

WAC 173-460-060 Control technology requirements. (effective 8/21/98)

WAC 173-460-070 Ambient impact requirement. (effective 9/18/91)

WAC 173-460-080 Demonstrating ambient impact compliance. (effective 2/14/94)

WAC 173-460-090 Second tier analysis. (effective 2/14/94)

(b) The Washington State Department of Ecology is the permitting agency for the Prevention of Significant Deterioration (PSD) program under WAC 173-400-700 through WAC 173-400-750 (as delegated by agreement with the US Environmental Protection Agency, Region 10), and for primary aluminum smelters, kraft pulp mills, and sulfite pulp mills.

(c) The Washington State Department of Health is the permitting agency for radionuclides under chapter 246-247 WAC.

(d) The Energy Facility Site Evaluation Council (EFSEC) is the permitting agency for large natural gas and oil pipelines, electric power plants above 350 megawatts, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields under chapter 463-78 WAC.

WSR 07-20-068

PERMANENT RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed September 28, 2007, 2:14 p.m., effective November 1, 2007]

Effective Date of Rule: November 1, 2007.

Purpose: To update the agency's address and board of directors meeting day to reflect changes.

To adjust the maximum civil penalty amount for inflation.

To update the federal regulation reference date in order to remain current.

Citation of Existing Rules Affected by this Order: Amending Sections 3.02, 3.11, and 3.25 of Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 07-17-104 on August 17, 2007.

Date Adopted: September 27, 2007.

James Nolan
Director - Compliance

AMENDATORY SECTION

REGULATION I SECTION 3.02 MEETINGS OF THE BOARD OF DIRECTORS

(a) **Regular Meetings.** The Agency Board of Directors shall meet at least ten (10) times per year. All Board of Director meetings are open to the public. Regular meetings of the Board (~~shall be~~) are usually held on the (~~second~~) fourth Thursday of each month at the Agency's offices. The Agency's offices are located at (~~(110 Union Street, Suite 500, Seattle, WA 98101-2038)~~) 1904 3rd Avenue, Suite 105, Seattle, WA 98101-3317. The Agency may be reached by tele-

phone at (206) 343-8800 or 1-800-552-3565, or by facsimile at (206) 343-7522.

Notice of the meetings shall be published in the State Register, as well as in the local newspapers of general circulation of the largest city within each member county. The notices shall state the time, date, and place of each meeting. Notice shall be provided at least ten (10) days prior to each meeting. The agenda for any meeting may be obtained from the Agency's website or by contacting the Agency directly.

During any meeting, the Board may retire to Executive Session, at which time all members of the public shall be excluded from the meeting.

Written communications to the Board or individual Board members may be made by contacting the Agency at the above address and facsimile number.

(b) **Special Meetings.** The Chair or majority of the members of the Board may call a special meeting at any time. Notice of such meetings shall be provided as required by the Open Public Meetings Act, chapter 42.30 RCW.

(c) **Public Records.** All minutes and records of all regular and special Board meetings, including written communications provided to the Board, shall be available for public inspection and copying as provided in the Public Disclosure Law, chapter 42.17 RCW. Any person wishing to review or copy such records should contact the Agency's records administrator.

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed ~~((\$15,127.00))~~ \$15,717.00 per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than ~~((\$15,127.00))~~ \$15,717.00 for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ~~((2006))~~ 2007.

WSR 07-20-074
PERMANENT RULES
SECRETARY OF STATE
(Elections Division)

[Filed October 1, 2007, 9:09 a.m., effective November 1, 2007]

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

Purpose: The Cycle 3 Rules of 2007 implement legislation passed by the 2007 legislature and address a variety of other topics, including voting centers, service and overseas voters, manual recounts, and local multicounty races and measures.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-250-060, 434-250-340, and 434-261-060; and amending WAC 434-250-030, 434-250-070, 434-250-100, 434-250-310, 434-250-320, 434-250-330, 434-262-105, 434-264-070, 434-264-100, 434-335-030, 434-335-190, 434-220-020, 434-220-030, 434-220-040, 434-220-060, 434-220-070, 434-220-080, 434-230-170, 434-253-020, 434-253-025, and 434-262-031.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 07-17-138 on August 20, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 434-235-020 is clarified to state that if a county auditor has incomplete residential information for a UOCAVA voter and therefore precincts the voter as living in the precinct that encompasses the county auditor's office, the registration is valid only for that primary or election.

WAC 434-250-100(2) states that if a location offers replacement ballots, provisional ballots, or direct recording electronic device voting, it is considered a voting center.

WAC 434-250-100 (2)(e) clarifies that if sample ballots are offered in lieu of provisional ballots, the sample ballots must meet provisional ballot requirements.

WAC 434-262-133 states that if a local ballot measure is on the ballot for a multicounty jurisdiction, the county auditor whose county has the most registered voters in the jurisdiction must combine the final results.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 2.

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 21, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 31, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 6, Amended 31, Repealed 5; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 1, 2007.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-020 Definitions. As used in this chapter:

(1) "Checkbox" means a voter response position on a consolidated ballot that allows a voter (~~who desires to vote in a partisan primary~~) to affiliate with a major political party.

(2) "Consolidated ballot" is a single ballot that includes party checkboxes and lists the major political party candidates for partisan office of all major political parties, the candidates for nonpartisan office, and the ballot measures. The candidates for partisan office are listed by party, and each party is separated from the other parties. The candidates for nonpartisan office and the ballot measures are listed at the end of the ballot, after the partisan offices. (~~In the case of a direct recording electronic device, a consolidated ballot must have a beginning screen which contains a checkbox for the major political parties. After the voter has affiliated with a major party by marking a checkbox, only the party ballot checked by the voter and the nonpartisan ballot shall appear to the voter.~~)

(3) "Nonpartisan ballot" means a ballot that includes nonpartisan offices listed in RCW 29A.52.231, and ballot measures.

(4) "Party affiliation" means:

(a) For a voter:

(i) On a consolidated ballot, (~~a voter's selection of a major political party in a manner consistent with the type of voting system used~~) selecting a party checkbox or voting in the partisan races for candidates of only one political party;

(ii) On physically separate ballots, voting (~~a major~~) one political party's ballot;

(b) For a write-in candidate for partisan office, filing as a write-in candidate as a member of a major political party.

(5) "Physically separate ballots" include party ballots for each major political party, and a nonpartisan ballot. Each party ballot lists the candidates for partisan office that have listed that party on the declaration of candidacy, as well as all candidates for the nonpartisan offices and the ballot measures.

(6) "Spot color" means coloring a portion of the ballot.

(7) "Void," when applied to unvoted ballots, means keeping the unvoted ballots in the sealed container in which they were deposited on election day.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-030 Ballot layout and color—Consolidated ballots. A county may choose to use a combination of both consolidated and physically separate ballots (~~for poll-site, absentee, and vote-by-mail ballots~~). County auditors may use spot coloring, shading, or colored printing to assist the voter in distinguishing between party sections. If color is used, blue must be used for the democratic party (~~ballot~~), and red must be used for the republican party (~~ballot~~). In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of consolidated ballots:

(1) The party checkboxes must be listed before all offices and ballot measures, pursuant to RCW 29A.36.106.

The checkboxes must be labeled "democratic party" and "republican party."

(2) Ballots must list partisan office candidates in columns or sections labeled "democratic party" and "republican party." The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party. If a party section spans multiple columns, the next party section must begin where the last party section ended, and there must be a well-defined division between the party sections. If all parties cannot be listed on the same side of the ballot, there must be a conspicuous explanation that additional parties are listed on the other side of the ballot.

(3) Ballots must list the nonpartisan offices and ballot measures separately in a column or section labeled "nonpartisan offices and measures."

(4) Ballot instructions must be printed on the ballot and include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

"This ballot contains ~~((major political party candidates for the))~~ partisan offices, ~~((candidates for the))~~ nonpartisan offices, and ballot measures. For the partisan offices, you may only vote for candidates of ~~((only))~~ one political party. ~~((Regardless of whether you vote for partisan offices, you may vote for the nonpartisan offices and the ballot measures.))~~

1. ~~((Select one political party. If you do not select a party or if you select more than one party, your votes for partisan offices will not be counted. No record will be made of the party you select.))~~ If you want to vote for democratic candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the democratic party and vote the democratic section of the ballot. If you want to vote for republican candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the republican party and vote the republican section of the ballot. There will be no record of which party you select. You may not select both parties or vote for candidates of both parties.

2. ~~((Vote only for candidates of that party. Votes for another party's candidates will not be counted.~~

3-)) Vote for nonpartisan offices and ballot measures. These votes will be counted, even if you do not select a political party."

(5) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-040 Ballot layout and color—Physically separate ballots. A county may choose to use a combination of both consolidated and physically separate ballots ~~((for poll site, absentee, and vote by mail ballots)).~~ County auditors may use colored ballot stock, spot coloring, shading,

or colored printing to assist the voter in distinguishing between the ballots. If colored ballot stock is used, blue must be used for the democratic party ballot, and red must be used for the republican party ballot. In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of physically separate ballots:

(1) A separate ballot must be produced for ~~((each major political party and for all nonpartisan races. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party))~~:

(a) The democratic party;

(b) The republican party; and

(c) The nonpartisan offices and ballot measures.

(2) Each physically separate ballot must have "democratic party," "republican party," or "nonpartisan offices and measures" printed on the ballot. In addition to the requirements of RCW 29A.36.121, each party ballot must list partisan offices first, then all nonpartisan offices and ballot measures. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party. All ballots must be issued to each voter, both at the poll-site and to voters voting by mail or absentee. ~~((Voters must be instructed to vote and return only one ballot.))~~

(3) Ballot instructions must be printed on the ballot and must include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

~~((Separate ballots for each political party have been provided, in addition to))~~ You have been provided a democratic party ballot, a republican party ballot, and a third ballot ~~((for))~~ that only lists the nonpartisan offices and ballot measures. Each party ballot lists the candidates of that ~~((political))~~ party running for partisan office, as well as the candidates running for nonpartisan office and the ballot measures. The ~~((ballot labeled))~~ "nonpartisan offices and measures" ballot only lists the ~~((candidates running for))~~ nonpartisan offices and ~~((the))~~ ballot measures, ~~((but))~~ and does **not** list any partisan offices.

You may only vote one ballot. ~~((Your affiliation with a political party is inferred by choosing that party's ballot, but no record will be made of your choice. If you cast more than one party ballot, none of your votes for partisan office will count. If you vote for the nonpartisan offices and ballot measures on a party ballot, return the party ballot only and not the separate nonpartisan ballot. Votes for the nonpartisan offices and ballot measures will not be affected by your choice of party ballot.))~~ There will be no record of which ballot you return.

If you want to vote for democratic candidates, vote the democratic ballot. If you want to vote for republican candidates, vote the republican ballot. If you do not want to affiliate with a political party, vote the "nonpartisan offices and measures" ballot."

(4) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered

a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-060 Ballot programming—Consolidated ballots. (1) Before a county may use a consolidated ballot format, the ballot counting program must achieve the following:

(a) If a voter marks a party checkbox (~~((for a major political party, only))~~), partisan office votes for candidates of that party only may be counted, in addition to votes for the non-partisan offices and ballot measures; (~~and~~)

(b) If a voter marks a party checkbox, partisan office votes for candidates of the other party may not be counted;

(c) If a voter does not mark a party checkbox (~~((for a major political party, no votes for a partisan office))~~) but votes in the partisan races for candidates of only one party, the partisan office votes may be counted, in addition to the nonpartisan offices and ballot measures; (~~and~~)

(~~e~~) (d) If a voter does not mark a party checkbox and votes in the partisan races for candidates of both political parties, no votes for partisan office may be counted but votes for nonpartisan office and ballot measures may be counted;

(e) If a voter marks (~~two or more~~) both party checkboxes, no votes for (a) partisan office may be counted but votes for nonpartisan office and ballot measures may be counted; and

(~~f~~) (f) In the case of direct recording electronic devices, the voter must be allowed to select one (ballot) party on the first screen, and have only the ballot for the party selected appear to the voter.

(2) If an optical scan ballot counting program cannot use the checkbox to eliminate invalid votes for each of the situations listed in this section, all ballots must be inspected for those marks that cannot be read correctly. Improperly marked ballots must be duplicated to ensure invalid votes are not counted. In the case of precinct ballot counters, ballots must be inspected after they have been returned from the polls. As part of the canvassing process, the county auditor must take appropriate steps to amend the unofficial precinct count totals to reflect the correct count.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-070 Polling place procedures—Physically separate ballots. (1) In (~~the case of optical scan~~) a county using physically separate ballots, poll workers must give each voter a party ballot for each major political party and a nonpartisan ballot. The county auditor must number the ballot stubs in a manner so that it cannot be determined which ballot was cast by the voter. The poll workers must instruct the voter to choose one ballot to vote. The remaining two ballots must be deposited into an "unvoted ballots" container secured with a numbered seal. The voter may select a single ballot and deposit the other ballots in the "unvoted ballots" container prior to entering the voting booth, or may deposit the unvoted ballots after leaving the voting booth. Regardless

of when the ballot selection is made, the poll workers must ensure that only one ballot is deposited in the ballot box and the remaining ballots are deposited into the "unvoted ballots" container. The privacy of the ballot selection by the voter must be maintained. The ballot stub must be removed and placed into the ballot stub envelope before the voted ballot is deposited into the ballot box.

(2) The "unvoted ballots" container must remain sealed and be returned to the county auditor with the supplies and voting materials.

(3) If a voter spoils a ballot and wishes to correct the error, the ballot must be returned to the poll worker and placed into the spoiled ballot envelope. The poll worker must issue a new set of ballots, consisting of each major political party's ballot and the nonpartisan ballot. The ballot stub number must be recorded in the poll book.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-080 No (~~records made at poll sites~~) record of political party affiliation. Pursuant to RCW 29A.44.231, no record of the political party (~~ballot~~) selected by the voter may be made. This prohibition includes poll workers, political observers and any other person who may be present while voting or ballot processing is taking place. The use of devices such as telephones, cameras, or recording devices to report, track, or monitor (~~the ballot~~) a voter's party selection (by voters) is prohibited.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-230-170 Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates (~~are to~~) may be voted on for such office (~~(e.g., vote for, with the words, "one," "two," or a spelled number)~~). The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed together with political party designation or abbreviation as certified by the secretary of state as provided in RCW 29A.36.011 or the word "nonpartisan," or "NP" as applicable. When choosing to use abbreviations, the county auditor must provide a legend on each ballot defining all abbreviations. In a partisan primary, candidates shall be listed by political party as provided in chapter 434-220 WAC. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the names of all candidates for President and Vice-President for each party shall be grouped together with one vote response position for each party, where the voter may indicate his or her choice.

Candidate names shall be printed in a type style and point size which is easily read. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include using a smaller point size, a different type style, or setting the name in

upper/lower case letters, rather than upper case, if appropriate.

Each position, with the candidates running for that office, shall be clearly delineated from the following one by a bold line. Following each listing of candidates shall be a blank space for writing in the name of any candidate.

Chapter 434-235 WAC

SERVICE AND OVERSEAS VOTERS

NEW SECTION

WAC 434-235-010 Scope. (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Sec. 1973ff, and the provisions for service and overseas voters in Title 29A RCW.

(2) Uniformed service voter is defined in 42 U.S.C. Sec. 1973ff-6(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under 42 U.S.C. Sec. 1973ff-6 while in active service;

(b) Is a student or member of the faculty at a United States military academy;

(c) Is a member of the merchant marine of the United States;

(d) Is a program participant as defined in RCW 40.24.-020; or

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) Overseas voter is defined in 42 U.S.C. Sec. 1973ff-6(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(5) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States or the District of Columbia.

NEW SECTION

WAC 434-235-020 Voter registration. (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140, 29A.08.145, and WAC 434-324-075 have passed.

(a) If the voter is not previously registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system accordingly.

(b) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as outlined in RCW 29A.08.113.

(c) If the county auditor is unable to precinct the voter due to an incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.

NEW SECTION

WAC 434-235-030 Absentee voting. (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

(a) Any manner authorized by WAC 434-250-030;

(b) A federal post card application issued by the federal voting assistance program; or

(c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor may issue an absentee ballot by mail, e-mail, fax, or other means as specifically requested by the voter.

(4) If a voters' pamphlet for that primary or election is available, the county auditor must include a voters' pamphlet with the absentee ballot.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, the secretary of state must furnish envelopes and instructions for absentee ballots issued to uniformed, overseas and service voters. Absentee ballots issued to voters in these categories must be mailed postage-free, and return envelopes must be marked to indicate that they may be returned postage-free. For purposes of RCW 29A.40.150, service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW.

NEW SECTION

WAC 434-235-040 Processing absentee ballots. (1)

Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

(2) The absentee ballots referred to in this section must be received prior to certification of the election or primary. The date on the envelope associated with the voter's signature, rather than the postmark on the envelope, determines the validity of the ballot. The signature on the oath must be dated no later than election day. An absentee ballot returned electronically is invalid until the original is received.

(3) The county auditor must provide statistics on voting by uniformed, service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-250-030 Applications. (1) As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed; and

(c) A space for the voter to sign and date the application.

A voter may request status as an ongoing absentee voter by indicating such on a standard voter registration form.

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made

by a family member. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed;

(c) A space for the voter to indicate for which election or elections the application is made; and

(d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

(a) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and

(b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible.

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

~~((5) If an application for an absentee ballot is received from a military or overseas voter who is not already registered, and the application does not contain sufficient address information to enable the auditor to issue the correct absentee ballot, the auditor shall contact the person to clarify the application. If, in the judgment of the county auditor, insufficient time exists to correct the application, the auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. Upon its return, the ballot must be referred to the county canvassing board, and the only offices or issues that may be tabulated are those common to the entire county.))~~

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-070 Forwarding ballots. (1) If the county auditor chooses not to forward ballots, the ~~((return))~~ envelope must clearly indicate the ballot is not to be forwarded ~~((and return postage is guaranteed))~~.

(2) If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the county auditor must include with the ballot an explanation of qualifications

necessary to vote and instructions substantially similar to the following:

If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

The above instructions and the explanation required by RCW 29A.40.091 may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. Auditors must begin to provide the above instruction to voters no later than January 1, 2008. The county auditor must utilize postal service endorsements that allow:

- (a) The ballots to be forwarded;
- (b) The county auditor to receive from the post office the addresses to which ballots were forwarded; and
- (c) The return of ballots that were not capable of being forwarded.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-060 Service and overseas voters.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-250-100 ((~~Depositing of ballots.~~) Ballot deposit sites and voting centers. ~~((Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. Places of deposit))~~ (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

~~((+))~~(a) ~~((Staffed sites))~~ If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If two or more deposit site staff are persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of ~~((the))~~ their duties. ~~((b))~~ Staffed deposit sites ~~Staffed deposit sites~~ open on election day must be open from 7:00 a.m. until 8:00 p.m. ~~((on the day of the election and))~~ Staffed deposit sites may be open prior to the election ~~((on))~~ according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board ~~((for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff)).~~

~~((c))~~ A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.

~~(2)~~ Unstaffed sites may be used if the ballot drop box is either:

~~(a)~~ Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or

~~(b)~~ Secured and located indoors)) (b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. ~~((From eighteen~~

days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots.) Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot (~~drop~~) boxes must be emptied or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than forty-seven days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) In addition to the information required in the notice of election published pursuant to RCW 29A.52.351 and 29A.52.311, a county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must also state:

(a) The election will be conducted by mail and regular polling places will not be open;

(b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;

(c) The location where voters may obtain replacement ballots;

(d) Return postage is required;

(e) The dates, times and locations of designated deposit sites and (~~sites for voting devices that are accessible to the visually impaired, including the county auditor's office as a polling place~~) voting centers.

AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-250-320 (~~Deposit sites~~) Ballot deposit sites and voting centers in mail elections. A county auditor conducting a county-wide election entirely by mail must provide at least two (~~sites for the deposit of ballots. One of the deposit sites~~) locations to deposit ballots. These locations may be either a ballot deposit site or a voting center, as defined in WAC 434-250-100. At least one location may be at the county auditor's office. All other deposit sites must be at geographical locations that are different from the county auditor's office. (~~All deposit sites must meet the requirements of WAC 434-250-100.~~)

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-330 County auditor's office as a (~~polling place~~) voting center. (1) For elections conducted entirely by mail, (~~services that would have been provided at the polling place must, at a minimum, be provided at the county auditor's office, including provisional ballots. Such services must be provided~~) the county auditor's office must operate as a voting center beginning the (~~date~~) day that ballots are mailed to voters, excluding Saturdays, Sundays, and legal holidays. (~~Identification must be provided in compliance with RCW 29A.44.205 and WAC 434-253-024, except in the case of replacement ballots as authorized by RCW 29A.48.040. If the county auditor does not maintain poll books at the county auditor's office, the voter must sign a record that includes the same information that would have appeared in a poll book. To maintain the secrecy of each voter's ballot, the voter's information must not be recorded in the same order that his or her ballot was cast.~~)

(2) If the persons providing services at the county auditor's office are not employees of the county auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political parties and must subscribe to an oath regarding the discharge of duties.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-340 Manual count of selected precincts.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-253-020 Polling place—Election supplies. Polling places shall be provided, at a minimum, with the following supplies at every election:

(1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;

(2) Inspector's poll book;

(3) Required oaths/certificates for inspectors and judges;

(4) Sufficient number of ballots as determined by election officer;

(5) Ballot containers;

(6) United States flag;

(7) Voting instruction signs;

(8) Challenge and provisional ballots and envelopes;

(9) Cancellation cards due to death;

(10) Voting equipment instructions;

(11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;

(12) Keys and/or extra seals;

(13) Pay voucher;

(14) Ballots stub envelope;

(15) Emergency plan of action;

(16) Either sample ballots or voters' pamphlets;

(17) HAVA voter information poster;

(18) A sign listing the date of the election and the hours of voting on election day;

(19) Voter registration forms; and

~~((19))~~ (20) For partisan primaries in counties using physically separate ballots, ~~(and) an~~ "unvoted ballots" container with a numbered seal.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-025 Polling place—Items to be posted.

The following items must be posted or displayed at each polling place while it is open:

(1) United States flag;

(2) HAVA voter information poster;

(3) A sign listing the date of the election and the hours of voting on election day;

(4) Voting instructions printed in at least 16 point bold type;

~~((4))~~ (5) Either sample ballots or voters' pamphlets;

~~((5))~~ (6) Voter registration forms;

~~((6))~~ (7) Election materials in alternative languages if so required by the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and

~~((7))~~ (8) Any other items the county auditor deems necessary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-261-060 Vote tallying system—A manual count of random precincts.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-253-047. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

~~((1))~~ (a) Where two ballots are found folded together, or where a voter has voted more than one ballot;

~~((2))~~ (b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

~~((3))~~ (c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

~~((4))~~ (d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

~~((5))~~ (e) Where the voter has voted for more candidates for an office than are permissible;

~~((6))~~ ~~Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434 250 040 unless the voter provides written instructions directing how the vote should be counted;~~

~~((7))~~ (f) In the case of a partisan primary~~(=~~ ~~(a))~~, where the voter has voted for a write-in candidate for partisan office who has not filed a write-in declaration of candidacy, thereby affiliating with a major party.

(3) For physically separate ballots in a partisan primary: ~~((i) A log must be kept of all voted ballots rejected and included as part of the county canvassing board minutes.)~~

(a) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.

~~((ii))~~ (b) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank party ballot ~~((of the same party the voter originally voted for))~~ and counted.

~~((iii))~~ (c) When a ~~(party ballot and nonpartisan ballot both have been returned with the nonpartisan offices and ballot measures)~~ voted nonpartisan ballot and a voted party ballot are both returned, and nonpartisan races and ballot measures were voted on both ballots, the nonpartisan and ballot measure votes that are the same on each ballot and the ~~(party)~~ partisan votes ~~(shall)~~ must be duplicated onto a blank party ballot and counted.

~~((iv) Write-in votes for a partisan candidate on a nonpartisan ballot must not be counted in the final write-in tally.~~

~~(v) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy, thereby affiliating with a major party, must not be counted in the final write-in tally.~~

~~(vi) If physically separate ballots are used and a voter returns more than one voted partisan ballot, no votes cast for candidates for partisan office shall be counted. If votes are cast for nonpartisan offices and/or ballot measures on only one of the partisan ballots, the nonpartisan votes must be counted. If votes are cast for nonpartisan offices and/or ballot measures on more than one party ballot, only those votes which are the same on each ballot shall be duplicated onto a nonpartisan ballot and counted.~~

~~(vii) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.~~

~~(b) For consolidated ballots:~~

~~(i) When voting a consolidated ballot, if the voter does not mark the party checkbox, votes cast for candidates for partisan office must not be counted but votes cast on the nonpartisan portion of the ballot shall be counted.~~

~~(ii) Write-in votes for a partisan candidate in a partisan office on the nonpartisan section of the ballot must not be counted in the final write-in tally.~~

~~(iii) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy shall not be counted in the final write-in tally.~~

~~(iv) If the voter marks one party checkbox, only those votes for candidates of that party shall count. Votes cast for~~

~~candidates of other political parties must not be counted and do not cause over-votes.~~

~~Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule. The disposition of provisional ballots is governed by WAC 434-253-047.) (d) When more than one voted party ballot is returned, the partisan votes may not be counted but the nonpartisan and ballot measure votes that are the same on both ballots must be duplicated onto a blank nonpartisan ballot and counted.~~

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-262-105 Audit of results of votes cast on direct recording electronic device. In an audit, the county auditor must compare the paper records with the electronic results cast on the direct recording electronic devices.

(1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit and utilized in the election. If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

(2) Only races and issues with more than ten votes cast on all direct recording electronic devices in the county may be selected for the audit. If the county does not have such a contest, it must not conduct the audit of paper records required by RCW 29A.60.185.

(3) Counties that utilized more than one direct recording electronic device in the primary or election must randomly select the devices until the aggregate total of votes cast in each selected contest is greater than ten. The devices must also be aggregated until the number of devices selected meets the minimum required by RCW 29A.60.185.

(4) Written procedures to perform audits of direct recording electronic devices as outlined in RCW 29A.60.185 and to resolve discrepancies identified in the audit must be promulgated by the county auditor.

(a) The procedures must provide for a process of randomly selecting by lot the direct recording electronic devices that will be audited.

(b) The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(i) A continuous paper record must be utilized (~~in the audit~~); the paper record must not be cut into separate individual records; (~~and~~)

(ii) If a paper record indicates a ballot has been canceled, that ballot must be exempt from the audit; and

(iii) If the paper records are incomplete, the ballot images stored on the direct recording electronic device must be printed and then compared to the electronic results recorded on the direct recording electronic device.

(5) (~~The county auditor must compare the paper records with the electronic records. The county auditor may~~) If there is a discrepancy between the electronic results and the paper

record results, the canvassing board must take ((any)) necessary actions to investigate and resolve ((discrepancies)) the discrepancy. The canvassing board must prepare a public report that outlines the discrepancy and how it was resolved. The results as determined by the canvassing board must replace the electronic results in the official certification.

(6) (~~Prior to certification, and in time to resolve any discrepancies, the county auditor must alert the county canvassing board of discrepancies identified during the audit.~~

(7) ~~Procedures to resolve audit discrepancies must be promulgated by each county canvassing board in accordance with discrepancy guidelines published by the secretary of state.)~~ If there is a discrepancy that cannot be resolved:

(a) The secretary of state must be notified immediately; and

(b) The vendor must be notified and required to provide a satisfactory explanation for the discrepancy within thirty days.

~~((8))~~ (7) The aggregate total of paper records counted manually is subject to public disclosure.

NEW SECTION

WAC 434-262-132 Election results for multicounty candidate races. In a candidate race in a multicounty jurisdiction, with the exception of certificates of election issued in accordance with RCW 29A.52.360 and 29A.52.370, the filing officer must collect and combine the certified results from the county canvassing boards in order to issue a certificate of election.

NEW SECTION

WAC 434-262-133 Election results for multicounty local ballot measures. In a local ballot measure election for a multicounty jurisdiction, the county auditor from the county with the greatest number of registered voters in the jurisdiction must combine the final results for that ballot measure from all relevant counties.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-070 Manual recount of votes cast on direct recording electronic devices. In a manual recount, the county auditor must compare the paper records with the electronic results cast on direct recording electronic devices.

(1) Written procedures to perform manual recounts of direct recording electronic devices must be promulgated by the county auditor. The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(a) A continuous paper record must be utilized (~~in the audit~~); the paper record must not be cut into separate individual records; (~~and~~)

(b) If a paper record indicates a ballot has been canceled, the ballot must be exempt from the recount; and

(c) If the paper records are incomplete, the ballot images stored on the direct recording electronic device must be printed and then compared to the electronic results recorded on the direct recording electronic device.

(2) ~~((The county auditor must compare the hand recount results with the original results. The county auditor may take any necessary actions to investigate and resolve discrepancies.))~~ If there is a discrepancy between the electronic results and the paper record results, the canvassing board must take necessary action to investigate and resolve the discrepancy. The canvassing board must prepare a public report that outlines the discrepancy and how it was resolved. The results as determined by the canvassing board must replace the electronic results in the official certification.

(3) If there is a discrepancy that cannot be resolved:

(a) The secretary of state must be notified immediately; and

(b) The vendor must be notified and required to provide a satisfactory explanation for the discrepancy within thirty days.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-100 Manual recount—Counting boards. Each county auditor shall establish the number of counting boards to conduct the recount. Each board shall be comprised of no less than ~~((three))~~ two members, made up of:

(1) One representative from each of the two major political parties ~~((and one observer or staff person)); or~~

(2) Two staff persons ~~((and one observer; or~~

~~(3) Three staff persons)).~~

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-335-030 Initial application for certification. Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification December 1st and ending June 30th the following year. Certification examinations and hearings are only conducted between January 1st and September 15th of each year.

(1) The application must include, but is not limited to, the following information:

(a) Description of the applicant, business address, customer references, and list of election products.

(b) Description of the equipment under review, version numbers, release numbers, operating and maintenance manuals, training materials, and technical and operational specifications.

(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system.

(d) A monetary deposit as described in WAC 434-335-080.

(e) A copy of a letter from the applicant to each independent testing authority (ITA) which:

(i) Directs the ITA to send a copy of the completed ITA qualification report to the secretary of state;

(ii) Authorizes the ITA to discuss testing procedures and findings with the secretary of state; and

(iii) Authorizes the ITA to allow the secretary of state to review all records of any qualification testing conducted on the equipment.

(f) A technical data package (TDP) conforming to the 2002 *FEC Federal Voting Systems Standards (FVSS)*, Vol. II, Sec. 2 standards that includes:

(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. FVSS, 2.2.1.e);

(ii) A system functionality description (ref. FVSS, 2.3);

(iii) A system security specification (ref. FVSS, 2.6);

(iv) System operations procedures (ref. FVSS, 2.8);

(v) System maintenance procedures (ref. FVSS, 2.9);

(vi) Personnel deployment and training requirements (ref. FVSS, 2.10);

(vii) Configuration management plan (ref. FVSS, 2.11);

(viii) System change notes (if applicable, ref. FVSS, 2.13);

(ix) A system change list, if any, of modifications currently in development; and

(x) A system usability testing report.

(2) The vendor must either file the system executables for the certified system with the National Software Reference Library (NSRL) or place the source code of an electronic voting system ~~((must be placed))~~ in escrow ~~((and)), which must be accessible by the secretary of state under prescribed conditions ~~((allowing source code review for system verification)).~~~~

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-335-190 Restricted period. No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may be installed in a county between June 15th and November 30th of the same year without permission from the secretary of state. Such permission must be specific to the change and to the county making the change.

WSR 07-20-075

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 1, 2007, 9:52 a.m., effective November 1, 2007]

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

Purpose: The purpose of the new rule is to implement HB 1988, Security guard training requirements.

Citation of Existing Rules Affected by this Order: Repealing 1 [WAC 308-18-145]; and amending 3 [WAC 308-18-240, 308-18-300, and 308-18-305].

Statutory Authority for Adoption: Chapter 18.170 RCW.

Adopted under notice filed as WSR 07-17-063 on August 13, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 1.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: October 1, 2007.

Ralph Osgood
Assistant Director

AMENDATORY SECTION (Amending WSR 05-09-036, filed 4/14/05, effective 7/1/05)

WAC 308-18-240 Required records. The minimum records the principal of a private security guard company shall be required to keep are:

(1) Preassignment (~~and~~), postassignment, and annual refresher training and testing records for each private security guard.

(2) Private security guard temporary registration card ledger showing the department-supplied registration number, applicant's name, date of issue, date of expiration and date card was forwarded to the director.

(3) The company principal shall maintain proof of annual shooting requirements for each armed security guard employed by the security guard company in the armed security guard's training files or employee's files.

These records shall be retained and available for inspection by the director or the director's authorized representative for a minimum of three years.

AMENDATORY SECTION (Amending WSR 05-09-036, filed 4/14/05, effective 7/1/05)

WAC 308-18-300 Minimum preassignment training and testing requirements. ~~((1) Except as provided under RCW 18.170.100 (1)(b)(ii), beginning July 1, 2005, all security guards licensed on or after July 1, 2005, must complete at least eight hours of preassignment training. Four hours of the preassignment training classroom and/or on-the-job training shall be in subjects determined by the security guard company principal developed to fit the specific type of duty required by the post. The additional four hours of the pre-~~

~~assignment training classroom instruction shall be in the following listed subjects and shall be the contents of the preassignment exam developed by the department:))~~ Preassignment training must consist of eight hours of training.

(1) At least four hours of the training must take place in an organized and formal setting. The remaining four hours of training can be continued in the organized and formal setting or it can be individual instruction.

(2) The preassignment organized and formal training must be from the following listed subjects. These training topics are the source of the questions in the preassignment examination issued by the department.

(a) Basic principles.

- (i) Basic role of the security guard;
- (ii) Washington state licensing laws;
- (iii) Observation;
- (iv) Proper actions, reactions;
- (v) Homeland security - terrorism and surveillance.

(b) Legal powers and limitations.

- (i) Citizens arrest;
- (ii) Authority to detain, question, or search a private citizen;
- (iii) Authority to search or seize private property;
- (iv) Use of force;
- (v) Avoiding liability.

(c) Emergency response.

- (i) How to define what is or is not an emergency situation;
- (ii) Response to fires;
- (iii) Response to medical emergencies;
- (iv) Response to criminal acts;
- (v) Bomb threats.

(d) Safety and accident prevention.

- (i) Hazardous materials including MSDS;
- (ii) Accident reporting.

(e) Report writing.

Elements and characteristics of a report.

~~((2))~~ (3) All private security guard applicants, after receiving preassignment training and prior to receiving their license or temporary registration card, must successfully complete an exam designed and provided by the department to demonstrate understanding and retention of the information learned in the training course on the subjects listed in WAC 308-18-300. The exam shall consist of multiple choice questions. All applicants must answer all questions correctly on the preassignment training exam or questions incorrectly answered must be reviewed to ensure the applicant's understanding and then initialed by both the applicant and the trainer verifying knowledge of the correct answer(s).

AMENDATORY SECTION (Amending WSR 05-09-036, filed 4/14/05, effective 7/1/05)

WAC 308-18-305 Minimum postassignment (~~and on-the-job~~) training requirements and training topics. ~~((1) Beginning July 1, 2005, all security guards must complete at least eight hours of postassignment or on-the-job training.~~

(a) Security guards licensed on or after July 1, 2005, are required to complete four hours of postassignment training

within the first six months of employment and the remaining four hours completed within the following six months.

(b) Security guards licensed prior to July 1, 2005, are required to complete four hours of postassignment training by December 31, 2005, and the remaining four hours must be completed by July 1, 2006.

(c) Beginning January 1, 2006, the number of required postassignment training hours must be increased by one hour every year until January 1, 2012. The number of postassignment training hours required of a security guard is the number required on the date the security guard is initially licensed by the department. The additional hours of training must be completed within eighteen months after the date a security guard is hired.) Postassignment training must consist of eight hours of training in any topics contained in this section. These topics may also be used in the annual refresher training. Training requirements are described in chapter 18.170 RCW.

((2)) (1) The topic areas that must be used for postassignment training are as follows and may also include the subject topics listed under WAC 308-18-300:

(a) **Basic role of private security guards.**

(i) Security awareness;
(ii) Private security guards and the criminal justice system;

(iii) Information sharing;
(iv) Crime and loss prevention.

(b) **Legal aspects of private security.**

(i) Evidence and evidence handling;
(ii) Use of force;
(iii) Court testimony;
(iv) Incident scene preservation;
(v) Equal employment opportunity (EEO) and diversity;
(vi) State and local laws.

(c) **Security officer conduct.**

(i) Ethics;
(ii) Honesty;
(iii) Professional image.
(d) **Observation and incident reporting.**
(i) Observation techniques;
(ii) Note taking;
(iii) Report writing.

(e) **Principles of communications.**

(i) Interpersonal skills;
(ii) Verbal communication skills;
(iii) Building relationships with law enforcement;
(iv) Customer services and public relations;
(v) Workplace violence.

(f) **Principles of access control.**

(i) Enter and exit control procedures;
(ii) Electronic security systems.

(g) **Principles of safeguarding information.**

Proprietary and confidential.

(h) **Emergency response procedures.**

Critical incident response (e.g., natural disasters, accidents, human caused events).

(i) **Evacuation processes.**

(j) **Life safety awareness.**

(i) Safety hazards in the workplace/surroundings;
(ii) Emergency equipment placement;

(iii) Fire prevention skills;

(iv) Hazardous materials;

(v) Occupational safety and health requirements (e.g., OSHA related training, bloodborne pathogens, etc.).

(k) **Job assignment and postorders.**

(i) Assignments and tasks;
(ii) Patrol.

((3)) (2) The required postassignment training records must be attested to by a licensed certified trainer and retained by the company. The postassignment training records must include the following information:

(a) Security guard name and signature;
(b) Training topics covered;
(c) Number of training hours received;
(d) Date training was completed;
(e) Certified trainer attesting to the training.

((4)) (3) Electronic records and signatures are permitted. The postassignment training records are not required to be submitted to the department, but must be available upon request from the company for three years.

(4) Security guard companies are required to maintain complete detailed training records. The training records must include the name and signature of the department certified trainer attesting to the training provided.

Transferring security guards may provide a copy of their training records to another security guard company. Security guard companies may accept the records as proof that the security guards have completed the required postassignment training and not repeat postassignment training.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-18-145

Comments by chief law enforcement officers and employers.

WSR 07-20-076

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed October 1, 2007, 12:56 p.m., effective November 1, 2007]

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

Purpose: The adopted rule eliminates unnecessary definitions, clarifies existing definitions, establishes supervision standards for occupational therapy assistants and aides consistent with the American Occupational Therapy Association, moves definitions from other sections to the definition section, and updates the name of the national testing agency. WAC 246-847-110 was not listed on the CR-102 notice form, but was included in the proposed rule text.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-847-130; amending WAC 246-847-010 and 246-847-110; and new section WAC 246-847-135.

Statutory Authority for Adoption: RCW 18.59.130.

Adopted under notice filed as WSR 07-07-098 on March 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-847-010 was changed to further clarify the definition of professional supervision. The change was not substantive.

A final cost-benefit analysis is available by contacting Vicki Brown, Program Manager, Occupational Therapy Practice Board, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4865, fax (360) 664-9077, e-mail vicki.brown@doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: October 1, 2007.

Mark T. Lehner, OT, Chair
Occupational Therapy Practice Board

AMENDATORY SECTION (Amending Order 300B, filed 8/24/92, effective 9/24/92)

WAC 246-847-010 Definitions. ~~((1) The following terms in RCW 18.59.020(2) shall mean:~~

~~(a) "Scientifically based use of purposeful activity" is the treatment of individuals using established methodology based upon the behavioral and biological sciences and includes the analysis, application and adaptation of activities for use with individuals having a variety of physical, emotional, cognitive and social disorders. Use of purposeful activity includes a process of continually modifying treatment to meet the changing needs of an individual. Purposeful activity is goal-oriented and cannot be routinely prescribed.~~

~~(b) "Teaching daily living skills" is the instruction in daily living skills based upon the evaluation of all the components of the individual's disability and the adaptation or treatment based on the evaluation. Components of a disability are physical, sensory, social, emotional and cognitive functions.~~

~~(c) "Developing prevocational skills and play and avocational capabilities" is not only the development of prevocational skills and play and avocational capabilities but involves the scientifically based use of purposeful activity.~~

~~(d) "Designing, fabricating, or applying selected orthotic and prosthetic devices or selected adaptive equipment" is not specific occupational therapy services if a person designs, fabricates, or applies selected orthotic and prosthetic devices or selected adaptive equipment for an individual if the device or equipment is prescribed or ordered by a health care profes-~~

~~sional authorized by the laws of the state of Washington to prescribe the device or equipment or direct the design, fabrication, or application of the device or equipment.~~

~~(e) "Adapting environments for the handicapped" is the evaluation of all the components of an individual's disability and the adaptation of the environment of the individual based on the evaluation. Components of a disability are physical, sensory, social, emotional and cognitive functions.~~

~~(2) "Supervision" and "regular consultation" of an occupational therapy assistant by an occupational therapist in RCW 18.59.020(4) and "direct supervision" of a person holding a limited permit by an occupational therapist in RCW 18.59.040(7) shall mean face to face meetings between the occupational therapist and occupational therapy assistant and between the occupational therapist and holder of a limited permit occurring at intervals as determined necessary by the occupational therapist to establish, review, or revise the client's treatment objectives. The meetings shall be documented and the documentation shall be maintained in each client's treatment record. The failure to meet to establish, review, or revise the client's treatment objectives at sufficient intervals to meet the client's needs shall be grounds for disciplinary action against the occupational therapist's license and/or the occupational therapy assistant's license to practice in the state of Washington and/or the limited permit pursuant to WAC 246-847-160 (4) and (14), 246-847-170 (2) and (3) and RCW 18.59.100 for conduct occurring prior to June 11, 1986 and pursuant to RCW 18.130.180 for conduct occurring on or after June 11, 1986.~~

~~(3) "Professional supervision" of an occupational therapy aide in RCW 18.59.020(5) shall mean:~~

~~(a) Documented training by the occupational therapist of the occupational therapy aide in each specific occupational therapy technique for each specific client and the training shall be performed on the client;~~

~~(b) Face to face meetings between the occupational therapy aide and the supervising occupational therapist or an occupational therapy assistant under the direction of the supervising occupational therapist occurring at intervals as determined by the occupational therapist to meet the client's needs, but shall occur at least once every two weeks; and~~

~~(c) The occupational therapist shall observe the occupational therapy aide perform on the client the specific occupational therapy techniques for which the occupational therapy aide was trained at intervals as determined by the occupational therapist to meet the client's needs, but shall occur at least once a month.~~

~~The meetings and client contacts shall be documented and the documentation shall be maintained in the client's treatment records. The failure to meet at sufficient intervals to meet the client's needs shall be grounds for disciplinary action against the occupational therapist's license to practice in the state of Washington pursuant to WAC 246-847-160 (4) and (14), 246-847-170 (2) and (3) and RCW 18.59.100 for conduct occurring prior to June 11, 1986 and pursuant to RCW 18.130.180 for conduct occurring on or after June 11, 1986.~~

~~(4) Sections (2) and (3) of this rule shall not be effective until July 1, 1985.~~

(5) "Clients" include patients, students, and those to whom occupational therapy services are delivered.

(6) "Evaluation" is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the evaluation process and results. The evaluation data may be gathered through record review, specific observation, interview, and the administration of data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities.

(7) "Work site" in RCW 18.59.080 means the primary work location.

(8) "In association" for RCW 18.59.040(7) shall mean practicing in a setting in which another occupational therapist licensed in the state of Washington is available for consultation and assistance as needed to provide protection for the clients' health, safety and welfare.

(9) One "contact hour" is considered to be fifty minutes.

(10) "Peer reviewer" shall mean a licensed occupational therapist chosen by the licensee to review the self-study plan and verify that the self-study activity meets the objectives for peer-reviewed self-study as defined in WAC 246-847-065.) The following terms in this section apply throughout this chapter and have the following meanings:

(1) "Adapting environments for individuals with disabilities" includes assessing needs, identifying strategies, implementing and training in the use of strategies, and evaluating outcomes. Occupational therapy focuses on the interaction of an individual's skills and abilities, the features of the environment, and the demands and purposes of activities.

(2) "Clients" include patients, students, and those to whom occupational therapy services are delivered.

(3) "Client-related tasks" are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

(a) The outcome anticipated for the delegated task is predictable;

(b) The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide;

(c) The client has demonstrated some previous performance ability in executing the task; and

(d) The task routine and process have been clearly established.

(4) "Commonly accepted standards for the profession" in RCW 18.59.040 (5)(b) and 18.59.070 shall mean having passed the National Board for Certification in Occupational Therapy or its successor/predecessor organization, not having engaged in unprofessional conduct or gross incompetency as established by the board in WAC 246-847-160 for conduct occurring prior to June 11, 1986, and as established in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

(5) "Consultation" means that practitioners are expected to function as consultants within the scope of practice appropriate to their level of competence.

(6) "Developing prevocational skills and play and avocational capabilities" also involves the scientifically based use of purposeful activity.

(7) "Direct supervision" as described in RCW 18.59.040 (7) means daily, in-person contact at the site where services are provided by an occupational therapist licensed in the state of Washington.

(8) "Evaluation" is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the evaluation process and results. The evaluation data may be gathered through record review, specific observation, interview, and the administration of data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities.

(9) "In association" as described in RCW 18.59.040(7) means practicing in a setting in which an occupational therapist licensed in the state of Washington is available on the premises for supervision, consultation, and assistance as needed to provide protection for the client's health, safety and welfare.

(10) "Occupational therapy aide" means a person who is trained by an occupational therapist or occupational therapy assistant to perform client and nonclient related tasks. Occupational therapy aides are not primary service providers of occupational therapy in any practice setting. Occupational therapy aides do not provide skilled occupational therapy services.

(11) "Professional supervision" of an occupational therapy aide as described in RCW 18.59.020(5) means in-person contact at the treatment site by an occupational therapist or occupational therapy assistant licensed in the state of Washington. When client related tasks are provided by an occupational therapy aide more than once a week, professional supervision must occur at least weekly. When client related tasks are provided by an occupational therapy aide once a week or less, professional supervision must occur at least once every two weeks.

(12) "Regular consultation" as described in RCW 18.59.020(4) means in-person contact at least monthly by an occupational therapist licensed in the state of Washington with supervision available as needed by other methods which include but are not limited to phone and e-mail.

(13) "Scientifically based use of purposeful activity" is the treatment of individuals using established methodology based upon the behavioral and biological sciences and includes the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. "Occupations" are activities having unique meaning and purpose in an individual's life.

(14) "Teaching daily living skills" is the instruction in daily living skills based upon the evaluation of all the components of the individual's disability and the adaptation or treatment based on the evaluation.

(15) "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.

(16) "Work site" in RCW 18.59.080 means the primary work location.

AMENDATORY SECTION (Amending Order 300B, filed 8/24/92, effective 9/24/92)

WAC 246-847-110 Persons exempt from licensure pursuant to RCW 18.59.040(5). (1) To qualify for the exemption from licensure pursuant to RCW 18.59.040(5), the individual claiming the exemption shall have been actively engaged in the practice of occupational therapy within the preceding four-year period and shall in writing notify the department, at least thirty days before any occupational therapy services are performed in this state, of the following:

(a) In which state(s) the individual is licensed to perform occupational therapy services and the license number(s); and

(b) The name, address, and telephone number of at least one facility or employer where the individual has been engaged in the practice of occupational therapy within the preceding four years; or

(c) If the exemption is claimed (~~(pursuant to)~~ under RCW 18.59.040 (5)(b), the individual (~~(shall)~~ must submit a signed notarized statement attesting to:

(i) Having passed the (~~(American Occupational Therapy Certification Board))~~ National Board for Certification in Occupational Therapy examination or its successor/predecessor organization; and

(ii) Having engaged in occupational therapy practice within the preceding four years, including the name, address, and telephone number of at least one facility or employer during this period;

(iii) Not having engaged in unprofessional conduct (~~(or gross incompetency as established in WAC 246-847-160 for conduct occurring prior to June 11, 1986 and as established in))~~ under RCW 18.130.180 (~~(for conduct occurring on or after June 11, 1986; and not having been convicted of a crime involving moral turpitude or a felony relating to the profession of occupational therapy))~~); and

(d) A signed notarized statement describing when the occupational therapy services will be performed, where the occupational therapy services will be performed, and how long the individual will be performing occupational therapy services in this state.

(2) A ninety-day temporary permit must be received by the occupational therapist prior to rendering of occupational therapy services.

~~((3) "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.))~~

NEW SECTION

WAC 246-847-135 Standards of supervision. The following are the standards for supervision of occupational therapy assistants, limited permit holders, and occupational therapy aides:

(1) Licensed occupational therapy assistants must be supervised through regular consultation by an occupational therapist licensed in the state of Washington. Regular consultation must be documented and the documentation must be kept in a location determined by the supervising occupational therapist or occupational therapy assistant.

(2)(a) A limited permit holder must work in association with an occupational therapist licensed in the state of Washington with a minimum of one year of experience. "In asso-

ciation with" shall include consultation regarding evaluation, intervention, progress, reevaluation and discharge planning of each assigned patient at appropriate intervals and documented by cosignature of notes by the supervising occupational therapist.

(b) Limited permit holders who have failed the examination must be directly supervised by an occupational therapist licensed in the state of Washington with a minimum of one year of experience. Direct supervision must include consultation regarding evaluation, intervention, progress, reevaluation and discharge planning of each assigned patient at appropriate intervals and documented by cosignature of notes by the supervising occupational therapist.

(3) Occupational therapy aides must be professionally supervised and trained by an occupational therapist or an occupational therapy assistant licensed in the state of Washington. Professional supervision must include documented supervision and training.

(a) The occupational therapist or occupational therapy assistant shall train the occupational therapy aide on client and nonclient related tasks at least once a month.

(b) When performing client related tasks, the occupational therapist or occupational therapy assistant must ensure the occupational therapy aide is trained and competent in performing the task on the specific client.

(c) The documentation must be maintained in a location determined by the supervising occupational therapist or occupational therapy assistant.

(4) Definitions can be found in WAC 246-847-010.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-847-130

Definition of "commonly accepted standards for the profession."

WSR 07-20-078

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed October 1, 2007, 12:59 p.m., effective November 1, 2007]

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

Purpose: WAC 246-847-175 Delegation of authority to initiate investigations, delegates the board's authority to initiate investigations to the department of health through a case management team that includes department staff and at least one clinical member of the board. This change should shorten the time to determine whether or not to investigate a case and reduce the processing time for handling a complaint thus improving patient safety.

Statutory Authority for Adoption: RCW 18.59.130 and 18.130.050.

Other Authority: RCW 18.130.050.

Adopted under notice filed as WSR 07-07-099 on March 19, 2007.

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

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

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

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

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

Date Adopted: October 1, 2007.

Mark T. Lehner, OT, Chair
Occupational Therapy Practice Board

NEW SECTION

WAC 246-847-175 Delegation of authority to initiate investigations. The board delegates to a department of health case management team the authority to initiate an investigation when the board or the department receives information, by means of a complaint or otherwise, that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. The case management team will consist of, at a minimum, a board member licensed under chapter 18.59 RCW, the executive director or his or her designee, an investigator and a staff attorney.

WSR 07-20-079

PERMANENT RULES

HEALTH CARE AUTHORITY

(Basic Health)

[Order 07-04—Filed October 1, 2007, 1:01 p.m., effective November 1, 2007]

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

Purpose: The purpose of these rule amendments is to comply with chapter 259, Laws of 2007, which adds foster parents licensed under chapter 74.15 RCW, with incomes up to 300% of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, to the definition of "subsidized enrollee" for purposes of Basic Health eligibility.

Citation of Existing Rules Affected by this Order: Amending WAC 182-25-010 and 182-25-080.

Statutory Authority for Adoption: RCW 70.47.050.

Adopted under notice filed as WSR 07-17-095 on August 16, 2007.

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

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

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

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

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

Date Adopted: October 1, 2007.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-06, filed 5/24/06, effective 7/1/06)

WAC 182-25-010 Definitions. The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or "BHP") means the system of enrollment and payment for basic health care services administered by the administrator through managed health care systems.

(4) "BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. Eligibility for BHP Plus is determined by the department of social and health services, based on Medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, coinsurance and deductible.

(7) "Disenrollment" means the termination of coverage for a BHP enrollee.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent," as it applies to the subsidized or non-subsidized programs, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is:

(i) Younger than age nineteen, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(ii) Younger than age twenty-three, and a registered student at an accredited secondary school, college, university, technical college, or school of nursing, attending full time, other than during holidays, summer and scheduled breaks; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) An unmarried child younger than age nineteen who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for BHP coverage.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

(14) "Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment in BHP, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(a) Income includes:

(i) Wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). A net loss from self-employment will not be used to offset other income sources. In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, except that:

(A) A deduction for business use of the home may be allowed in cases where the enrollee has documented that more than fifty percent of their home is used for the business for the majority of the year; or

(B) A deduction for business use of the home may be allowed in cases where the enrollee has documented that they maintain a separate building located on the same property as their home that is used exclusively for the business;

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from self-employment will not be used to offset other income sources;

(iv) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, workers' compensation, and strike benefits from union funds;

(v) Payments for punitive damages;

(vi) Public assistance, alimony, child support, and military family allotments;

(vii) Work study, assistantships, or training stipends;

(viii) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

(ix) Net rental income, net royalties, and net gambling or lottery winnings;

(x) Lump sum inheritances and periodic receipts from estates or trusts; and

(xi) Short-term capital gains, such as from the sale of stock or real estate.

(b) Income does not include the following types of money received:

(i) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(ii) Tax refunds, gifts, loans, one-time insurance payments, other than for punitive damages, and one-time payments or winnings received more than one month prior to application;

(iii) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(iv) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(v) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vi) College or university scholarships, grants, and fellowships;

(vii) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145;

(viii) Long-term capital gains;

(ix) Crime victims' compensation;

(x) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction:

(A) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school full-time during the time the child care expenses were paid; and

(B) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been

provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions; government-funded acute health care or mental health facilities except as provided above; chemical dependency facilities; and nursing homes.

(20) "Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in subsection (19) of this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

(21) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(22) "Managed health care system" (or "MHCS") means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(23) "Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all Medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on Medicaid eligibility criteria.

(24) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(25) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(26) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(27) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

(28) "Participating employee" means an employee of a participating employer or home care agency who has met all

the eligibility requirements and has been enrolled for coverage under BHP.

(29) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(30) "Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(31) "Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes to BHP for enrollment in BHP.

(32) "Program" means subsidized BHP, nonsubsidized BHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within this chapter.

(33) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(34) "Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(35) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, as described in the member handbook.

(36) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(37) "Subscriber" is a person who applies to BHP on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom BHP sends notices and communications. The subscriber may be a BHP enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(38) "Subsidized enrollee" or "reduced premium enrollee" means an individual who ~~(enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA. Full-time students who have received a temporary visa to study in the United States are not eligible to enroll as subsidized enrollees. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match,~~

"subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA)) is not a full-time student who has received a temporary visa to study in the United States and who otherwise meets the criteria in (a), (b), or (c) of this subsection.

(a) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(b) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, and who is a foster parent licensed under chapter 74.15 RCW and whose current gross family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(39) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(40) "Washington state resident" or "resident," for purposes of this chapter, means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who meet the requirements of subsection (9)(b)(ii) of this section and are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

- (ii) A shelter or other physical location where the person is staying in lieu of a home; or
- (iii) Another person's home.

AMENDATORY SECTION (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

WAC 182-25-080 Premiums and co-payments. (1)

Subscribers or their employer or financial sponsor shall be responsible for paying the full monthly premium to BHP, on behalf of the subscriber and all enrolled dependents, according to the most current premium schedule. A third party may, with the approval of the administrator, become a financial sponsor and pay all or a designated portion of the premium on behalf of a subscriber and dependents, if any.

(2) The amount of premium due from or on behalf of a subsidized enrollee will be based upon the subscriber's gross family income, the managed health care system selected by the subscriber, rates payable to managed health care systems, and the number and ages of individuals in the subscriber's family.

(3) Once BHP has determined that an applicant and his/her dependents (if any) are eligible for enrollment, the applicant or employer or financial sponsor will be informed of the amount of the first month's premium for the applicant and his/her enrolled dependents. New enrollees will not be eligible to receive covered services on the effective date of enrollment specified by BHP unless the premium has been paid by the due date given. Thereafter, BHP will bill each subscriber or employer or financial sponsor monthly.

(4) Full payment for premiums due must be received by BHP by the date specified on the premium statement. If BHP does not receive full payment of a premium by the date specified on the premium statement, BHP shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with BHP or, in the case of group or financial sponsor coverage, to the employer or financial sponsor. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be suspended from coverage for one month. If payment is not received by the due date on the notice of suspension, the subscriber and enrolled family members will be disenrolled effective the date of the initial suspension. If an enrollee's coverage is suspended more than two times in a twelve-month period, the enrollee will be disenrolled for nonpayment under the provisions of WAC 182-25-090(2). Partial payment of premiums due, payment which for any reason cannot be applied to the correct BHP enrollee's account, or payment by check which is not signed, cannot be processed, or is returned due to nonsufficient funds will be regarded as nonpayment.

(5) Enrollees shall be responsible for paying any required co-payment, coinsurance, or deductible directly to the provider of a covered service or directly to the MHCS. Repeated failure to pay co-payments, coinsurance, or other cost-sharing in full on a timely basis may result in disenrollment, as provided in WAC 182-25-090(2).

(6) Monthly premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level will be set at the minimum premium amount

charged to enrollees with income below sixty-five percent of the federal poverty level. Monthly premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level will not exceed one hundred dollars per month.

**WSR 07-20-100
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed October 2, 2007, 11:28 a.m., effective November 2, 2007]

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

Purpose: This proposal will clarify when a health care assistant who leaves a specific facility/practitioner and more than two years later returns to this same facility/practitioner, that they will not be required to pay the expired credential reissuance fee or the late renewal fee as long as they hold an active credential with another facility/practitioner.

Citation of Existing Rules Affected by this Order: Amending WAC 246-826-990.

Statutory Authority for Adoption: RCW 18.135.030.

Adopted under notice filed as WSR 07-14-133 on July 3, 2007.

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

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

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

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

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

Date Adopted: October 2, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-826-990 Health care assistant fees and renewal cycle. (1) Certificates must be renewed every two years as provided in WAC 246-826-050 and chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) If a health care assistant who holds a current active credential leaves employment with a facility or practitioner and returns to employment with a facility or practitioner that previously employed the health care assistant, and more than two years has passed since that health care assistant's employment with the previous facility or practitioner ended, the health care assistant must complete a new credential application and pay the application fee. However, that health care assistant is not required to pay the late renewal penalty and the expired credential reissuance fee.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
First certification	\$60.00
Renewal	60.00
Expired ((certificate)) <u>credential</u> reissuance	50.00
Recertification	60.00
Late renewal penalty	50.00
Duplicate	15.00

WSR 07-20-101

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 2, 2007, 11:32 a.m., effective November 2, 2007]

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

Purpose: The rules implement 2005 HB 1546 which expanded the scope of practice of naturopathic physicians. The rules describe the expansion of naturopathic medicine to include legend drugs and controlled substances which are limited to codeine and testosterone products. The rules also describe the process by which naturopathic physicians are approved to add codeine, testosterone products, and intravenous therapy into their practice.

Citation of Existing Rules Affected by this Order: Amending WAC 246-836-210.

Statutory Authority for Adoption: RCW 18.130.050(1) and 18.36A.060.

Other Authority: Chapter 158, Laws of 2005.

Adopted under notice filed as WSR 07-14-127 on July 3, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-836-210 (1)(e) has been amended to correct a typographical error when referencing chapter 69.50 RCW, and to add a reference to chapter 246-887 WAC. In addition, WAC 246-836-210(4) has been amended to correct an inconsistency with statutory language. The prohibition of treatment of neoplastic diseases has been removed.

A final cost-benefit analysis is available by contacting Susan Gragg, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

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

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

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

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

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

Date Adopted: October 2, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending Order 247, filed 2/25/92, effective 3/27/92)

WAC 246-836-210 Authority to use, prescribe, dispense and order. ~~((Licensed naturopaths may use, prescribe, dispense, and order certain medicines of mineral, animal, and botanical origin including the following:))~~ (1) Naturopathic medical practice includes the prescription, administration, dispensing, and use of:

(a) Nutrition and food science, physical modalities, minor office procedures, homeopathy, hygiene, and immunizations/vaccinations;

(b) Nondrug contraceptive devices;

~~((derived from animal organs, tissues, and oils, minerals, and plants administered orally and topically))~~ including vitamins, minerals, botanical medicines, homeopathic medicines, and hormones;

(d) Legend drugs as defined under RCW 69.41.010 with the exception of Botulinum Toxin (commonly known as, among other names, Botox, Vistabel, Dysport, or Neurobloc) and inert substances used for cosmetic purposes; and

(e) Codeine and testosterone products that are contained within Schedules III, IV, and V in chapters 69.50 RCW and 246-887 WAC.

(2) In accordance with RCW 69.41.010(13), all prescriptions must be hand-printed, typewritten, or generated electronically.

(3) Prior to being allowed to administer, prescribe, dispense, or order controlled substances, a naturopathic physician must meet the requirements in WAC 246-836-211 and have obtained the appropriate registration issued by the Federal Drug Enforcement Administration.

~~((2) Legend topical ointments, creams, and lotions containing antiseptics;~~

~~((3) Legend topical, local anesthetics applied to superficial structures for use during minor office procedures as appropriate. Topical local anesthetic means the local application of anesthetic which may be injected into the intradermal subcutaneous layers of the skin only to the extent necessary to care for superficial lacerations, abrasions and the removal of foreign bodies located in superficial structures not to include the eye.~~

~~((4) Legend vitamins, minerals, trace minerals, and whole gland thyroid.~~

~~(5) Nondrug contraceptive devices except intrauterine devices.~~

~~(6) All homeopathic preparations.~~

~~(7) Intramuscular injections limited to vitamin B-12 preparations and combinations when clinical or laboratory evaluation has indicated vitamin B-12 deficiency.~~

~~(8) Immunizing agents approved by the Bureau of Biologies, United States Food and Drug Administration and listed in the current *Recommendations of the United States Public Health Services Immunizations Practices Advisory Committee (ACIP)* or the *Report of the Committee of Infectious Diseases* published by the American Academy of Pediatrics.~~

~~(9) Legend substances as exemplified in traditional botanical and herbal pharmacopeia as identified by a list of substances to be developed by the secretary.)~~ (4) Naturopathic physicians may not treat malignancies except in collaboration with a practitioner licensed under chapter 18.57 or 18.71 RCW.

NEW SECTION

WAC 246-836-211 Authorization regarding controlled substances. (1) Upon approval by the department, naturopathic physicians may obtain a current Federal Drug Enforcement Administration registration. The department may approve naturopathic physicians who have:

(a) Provided documentation of a current Federal Drug Enforcement Administration registration from another state; or

(b) Submitted an attestation of at least four hours of instruction. Instruction must be part of a graduate level course from a school approved under chapter 18.36A, 18.71, 18.57, or 18.79 RCW. Instruction must include the following:

- (i) Principles of medication selection;
- (ii) Patient selection and therapeutics education;
- (iii) Problem identification and assessment;
- (iv) Knowledge of interactions, if any;
- (v) Evaluation of outcome;
- (vi) Recognition and management of complications and outward reactions; and
- (vii) Education in pain management and drug seeking behaviors.

(2) The naturopathic physician must retain training documentation at least five years from attestation date.

NEW SECTION

WAC 246-836-220 Intramuscular, intravenous, subcutaneous, and intradermal injections. Naturopathic physicians may administer substances consistent with the practice of naturopathic medicine as indicated in WAC 246-836-210 through the means of intramuscular, intravenous, subcutaneous, and intradermal injections.

(1) Naturopathic physicians may use intravenous therapy when they have submitted an attestation of training. Training must be at least sixteen hours of instruction. At least eight hours must be part of a graduate level course from a school approved under chapter 18.36A, 18.71, 18.57, or 18.79 RCW. Instruction must include the following:

- (a) Indications;
- (b) Contraindications;
- (c) Formularies;
- (d) Emergency protocols;
- (e) Osmolarity calculation;
- (f) Aseptic technique; and
- (g) Proper documentation.

(2) The naturopathic physician must retain training documentation at least five years from attestation date.

(3) Intravenous chelation therapy is limited to use for heavy metal toxicity.

(4) All naturopathic physicians who use injection therapy must have a plan to manage adverse events including sensitivity, allergy, overdose, or other unintended reactions.

WSR 07-20-109

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 3, 2007, 8:17 a.m., effective November 3, 2007]

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

Purpose: Rule making is required to bring this rule in sync with other rules concerning ownership in doubt.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-115.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 07-16-126 on August 1, 2007.

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

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

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

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

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

Date Adopted: October 2, 2007.

Julie Knittle
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 06-22-025, filed 10/25/06, effective 11/25/06)

WAC 308-56A-115 Vehicles from a state or country other than Washington. (1) **What ownership documents are required to title and license a vehicle not currently titled or licensed in the state of Washington?**

(a) If a vehicle is titled in another state, the application for certificate of ownership must be accompanied by the

~~((most))~~ current ~~((title issued by that state))~~ ownership documents.

(b) If the vehicle was acquired from an agency of the United States government, the federal ownership document issued by the United States government must accompany the application for certificate of ownership. When a bill of sale covers more than one vehicle, a photocopy may be accepted when:

(i) United States federal government ~~((already))~~ either registered ~~((and/))~~ or titled in Washington with ~~((an))~~ a federal (FED) use class, the purchaser needs a bill of sale ~~((and the current registration))~~ for ~~((an))~~ a no title issued (NTI), or when title is issued in Washington, need title properly released.

(ii) A secure odometer disclosure completed only by the transferee~~((/))~~ and buyer if the vehicle falls within the federal odometer disclosure criteria.

(c) If a vehicle is titled in another country, the application for certificate of ownership must be accompanied by the ~~((most))~~ current ownership document issued by that country. If the country from which the vehicle is imported cancels the vehicle ~~((title and/or registration))~~ ownership document for export, the application for certificate of ownership must be accompanied by documents showing proof of ownership and evidence of the cancellation if available. If evidence of cancellation is not available, then a statement of fact by the owner is required.

(d) If a member of the United States armed forces owns the vehicle and the vehicle has been registered by a United States government military entity, the application for certificate of ownership must be accompanied by the registration certificate as proof of ownership. If there is a lien holder, the armed forces member must provide the lien holder information at the time of application.

(2) What ownership documents are required to obtain a certificate of ownership for a vehicle from a non-titling state or country?

(a) If the vehicle is from a state or country that by policy or law does not title a specific vehicle, but does register it, the department will accept the registration as an ownership document. If the applicant is not the owner shown on the registration, a bill of sale or release of interest is also required.

(b) If the vehicle is from a state or country that neither registers nor titles, ~~((the department will accept a statement from the applicant certifying when and where they purchased the vehicle, and that the previous state or country does not title or register this type of vehicle. A bill of sale is required for vehicles brought in from any state or country. A statement certifying how the vehicle was acquired must be submitted at the time of application. The Washington certificate of ownership may contain a special notation if issued under these circumstances. If the bill of sale is not available,))~~ follow the ownership in doubt procedures from WAC 308-56A-210 ~~((apply))~~. The applicant must submit a statement indicating when and where they acquired the vehicle.

(3) What if I am unable to locate a record of my vehicle in any state or country? If there is no indication that your vehicle is from a nontitle or nonregistration state or country, and no record of your vehicle is found, you may follow ownership in doubt procedures in WAC 308-56A-210.

(4) What is required to title a vehicle from a titling state or country that has refused to issue a title document for a specific vehicle? If the state or country has refused to issue title, Washington may require the customer to comply with ownership in doubt procedures from WAC 308-56A-210 ~~((except those in WAC 308-56A-210(2)))~~. In those cases where a title was refused for reasons not applicable to Washington, the department may consider issuing a title with the appropriate documentation.

(5) What documentation is required in addition to the ownership document if my vehicle is from a foreign country? In addition to the ownership document, the application for certificate of ownership must be accompanied by:

(a) An approved ~~((United States Department of Treasury Customs Service))~~ Department of Homeland Security U.S. Customs and Border Protection Entry Summary form properly executed authorizing the vehicle entry into this country. Applications for certificate of ownership for vehicles imported from Puerto Rico need not be accompanied by a customs document;

(b) An English translation for any document provided which is not in the English language. The translator ~~((shall))~~ must provide a notarized~~((/))~~ or certified affidavit attesting to the accuracy of the translation;

(c) A release of interest from the owners shown on the ownership documents, as provided in WAC ~~((308-56A-210))~~ 308-56A-265, if the applicant is not the owner shown.

WSR 07-20-110

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 3, 2007, 8:17 a.m., effective November 3, 2007]

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

Purpose: Rule making is required to explain the issuance and restrictions of special license plates and to explain the continuing requirements for organizations to maintain the issuance of special plates - to make the language clear in both rules.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-065 and 308-96A-560.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 07-16-125 on August 1, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 2, 2007.

Julie Knittle
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 01-10-069, filed 4/30/01, effective 5/31/01)

WAC 308-96A-065 Personalized license plates. (1)

What is a personalized license plate? Personalized license plates are plates reflecting the registered owner's chosen format or designation and are limited to those described in RCW 46.16.560, 46.16.570 and 46.16.580.

(2) Are there any restrictions on the use of letters and numbers on personalized license plates? Personalized license plates may be issued with one to seven characters. Motorcycles and motorcycle trailers can have up to six characters. The letters "I" and "O" and the numbers "1" (one) and "0" (zero) may not be issued as single-digit plates.

(3) When may the department deny an application for or cancel personalized plates?

(a) The department may deny an application for personalized license plates or cancel personalized license plates previously issued if it determines the plate configuration to be:

- (i) Offensive to good taste and decency;
- (ii) Potentially misleading;
- (iii) Vulgar, profane or sexually suggestive in nature;
- (iv) A racial, ethnic, lifestyle or gender slur;
- (v) Related to alcohol or to illegal activities or substances;

- (vi) Blasphemous;
- (vii) Derogatory;
- (viii) Slanderous;
- (ix) A duplication of license plate or decal numbers provided in chapter 46.09, 46.10 or 46.16 RCW; or

(x) The personalized message appears to replicate the standard configuration for a special license plate; or

(xi) Contrary to the department's mission to promote highway safety.

(b) If the personalized license plates are canceled due to one or more reasons specified in subsection (3) of this section, the vehicle owner may:

(i) Apply for a refund for the fee paid under RCW 46.16.585 and 46.16.606 for such license plates; or

(ii) Instead of a refund, apply for and upon approval be issued personalized license plates with a different configuration without payment of additional personalized license plate fees.

(c) The department may cancel personalized license plates if they are:

(i) Not renewed by the owner within forty-five days of the vehicle expiration; or

(ii) Removed from a vehicle and not transferred to a replacement vehicle within thirty days; or

(iii) Transferred to a new owner who does not make proper application for the plates within twenty-five days.

(4) What special plates cannot be personalized?

(a) Medal of honor;

(b) Horseless carriage;

(c) Restored;

(d) Collector vehicle;

(e) Ham and Mars license plates;

(f) Former prisoner of war;

(g) Pearl Harbor survivor;

(h) Disabled veteran;

(i) Exempt license plates.

(5) If my registration for personalized license plates has elapsed, how do I get them reinstated or reissued?

(a) If you are an owner of a personalized license plate and do not renew it within forty-five days, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

(b) If you purchase a vehicle with a personalized plate and do not transfer the ownership of the personalized plate within twenty-five days, you forfeit ownership of the plate. The department will make that personalized plate available to the first applicant for that plate configuration.

(c) If you are the owner of a personalized license plate who does not transfer the plate as described in ~~((subsection (4)))~~(b) of this ~~((section))~~ subsection, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

~~((5))~~ **(6) Can I transfer my personalized license plate?** Yes, if you are the owner(s) of a vehicle with personalized license plates and sell, trade or otherwise transfer ownership of the vehicle, you may transfer the plates to another vehicle within thirty days; (the personalized license plates may be transferred at any vehicle licensing office or through a vehicle dealer if the owner wishes to transfer a plate to a dealer-purchased vehicle) or transfer the plates to a new owner. If the plates are transferred to a new owner, the current owner must provide the new owner with a notarized/certified release of interest for the plates. The new owner must make application to the department within twenty-five days, including payment of the original personalized license plate fee.

~~((6))~~ **(7) How do I dispose of my personalized vehicle license plates?**

(a) You may turn the plates in to the department with a notarized release of interest from the owner(s) relinquishing the right to that personalized license plate configuration; or

(b) If your vehicle has personalized license plates and is sold to a wrecker or you accept a total loss claim from your insurance company and you choose not to retain the salvage, you must either transfer the plates to another vehicle within thirty days or turn the plates in to the department with a notarized release of interest from all registered owner(s) relinquishing the right to that personalized license plate.

~~((7))~~ **(8) Will I ever have to replace my personalized vehicle license plate?** Yes, the personalized license plates are subject to the seven-year vehicle license plate replacement schedule.

AMENDATORY SECTION (Amending WSR 04-08-079, filed 4/6/04, effective 5/7/04)

WAC 308-96A-560 Special ~~((vehicle))~~ license plates—Criteria for creation or continued issuance. (1)

What is a special license plate series? For the purpose of this rule a special license plate series is one license plate design with a range of numbers and letter combinations to be determined by the department.

(2) What criteria are used to discontinue issuing special (~~vehicle~~) license plates? A special license plate series may be canceled if:

~~((+))~~ (a) The department determines that fewer than five hundred special license plates in the approved configuration are purchased annually and no less than one thousand five hundred special license plates are purchased in any continuous three-year period. (Except those license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

~~((2))~~ (b) If the sponsoring organization does not submit an annual financial statement required by RCW 46.16.765 and certified by an accountant; or

(c) The legislature concurs with a recommendation from the special license plate review board to discontinue a plate series created after January 1, 2003; or

~~((3))~~ (d) The state legislature changes the law allowing that plate series.

(3) Can an organization have more than one special license plate series? No. Organizations cannot have more than one special license plate series except those issued before January 1, 2006. Those organizations that already have multiple special license plate series may not have more.

An updated design of the current special license plates does not constitute more than one special license plate series. The newest design supersedes the prior design.

WSR 07-20-111

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 3, 2007, 8:17 a.m., effective November 3, 2007]

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

Purpose: Rule making is required to meet the requirements of HB 1000 and HB 1505 passed during the 60th legislature 2007 regular session.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96B-010 and 308-96B-020.

Statutory Authority for Adoption: RCW 46.12.381.

Adopted under notice filed as WSR 07-16-129 on August 1, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 2, 2007.

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 06-19-079, filed 9/19/06, effective 10/20/06)

WAC 308-96B-010 Definitions—Individual with disabilities special parking privileges. For the purposes of determining eligibility under RCW 46.16.381, for individual with disabilities special parking placards and license plates, the following definitions apply:

(1) "Application for individual" means the form provided by the department that must be completed by the individual and physician.

(2) "Application for organization" means the form provided by the department that must be completed by the organization.

(3) "Identification card" means the identification card bearing the name and date of birth of the person to whom the placard/plate/tab is issued.

(4) "Licensed physician" is a health care provider to include: Chiropractor (DC), naturopath (ND), physician or surgeon (MD or DO), podiatrist (DPM), advanced registered nurse practitioner (ARNP), physician's assistant (PA). Licensed physician does not include persons licensed in the professions of dentistry and optometry.

(5) "Permanent" means a licensed physician has certified the qualifying disability condition is expected to last at least five years.

(6) "Permit" means the eligibility for the temporary or permanent placard or special license plate(s), individual with disability license tab, and identification card.

(7) "Private carriers" means those entities contracting with public transportation authorities to transport persons with disabilities.

(8) "Privilege" means the right to utilize the benefits associated with the individuals with disabilities, parking placards, identification card, license plate(s) and tabs.

(9) "Public transportation authorities" means those entities operating motor vehicles owned or leased by Washington state, or a town, city, county, municipality, or metropolitan or municipal corporation within the state, or United States government agencies or Indian nations used for the primary purpose of transporting persons with disabilities.

(10) "Signature" means any memorandum, mark, stamp, or sign made with intent to authenticate an application for a placard/plate, or the subscription of any person.

AMENDATORY SECTION (Amending WSR 06-19-079, filed 9/19/06, effective 10/20/06)

WAC 308-96B-020 General provisions. (1) How do I qualify for an individual with disabilities parking privilege? To qualify for temporary or permanent individual with disabilities parking privilege, a licensed physician as defined in WAC 308-96B-010(4) must certify, on a department

approved application form, that you have a disability that limits or impairs your ability to walk and that you meet the requirements listed in RCW 46.16.381(1). The physician must sign a declaration under penalty of perjury that you have a disability that limits or impairs the ability to walk and that you meet one of the following criteria:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Are severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Have such a severe disability that you cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Use portable oxygen;

(e) Are restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Are impaired by cardiovascular disease or cardiac condition to the extent that your functional limitations are classified as class III or IV under standards accepted by the American Heart Association;

(g) Have a disability resulting from an acute sensitivity to automobile emissions which limits or impairs your ability to walk. Your personal physician as described in WAC 308-96B-010(4) must document that your disability is comparable in severity to the others listed in this subsection; or

(h) Is legally blind and has limited mobility;

(i) Limited by porphyria (acute sensitivity to light as defined in RCW 46.16.381).

The medical declaration is required on all original applications for permanent and temporary disability privileges and for permanent disability privileges that have been expired more than thirty days. A declaration is not required for renewal of existing Washington privileges for an individual with disabilities.

(2) How do I apply for an individual with disabilities parking privilege? You must complete and sign your portion of the application. Once the licensed physician portion of the application is completed, you submit it to most vehicle licensing offices or the department as noted on the application.

(3) Who may sign the application for an individual with disabilities who is unable to sign or is a minor? An authorized representative of the individual with disabilities may sign the application. The application must be accompanied by a copy of one of the following:

(a) A power of attorney;

(b) A Washington state court order or certification from the clerk of court confirming the court's action; or

(c) A declaration under penalty of perjury explaining why the applicant is unable to sign and explaining the signing person's association with the applicant. Example: Signature, Jane Doe, daughter.

(4) When is the individual with disabilities parking privilege no longer valid?

(a) The plates expire;

(b) The privilege expires;

(c) Upon death of the individual with disabilities;

(d) If the disability no longer exists;

(e) The special license plates have been canceled by department administrative action;

(f) If the privilege was issued in error; or

(g) If the individual with disability is no longer shown on the department's record as being a registered owner of the vehicle.

(5) What do I receive when my application is approved for an individual with disabilities parking privilege? An individual with disabilities identification card and:

(a) If you have a temporary disability, you will receive one temporary placard;

(b) If you have a permanent disability, you receive up to two privileges. You may choose to receive:

(i) Up to two permanent placards; or

(ii) One permanent placard and one set of individual with disabilities license plates or individual with disabilities year tab. The year tab may only be displayed on qualifying plates. The individual with disabilities must be a registered owner of the vehicle to receive these plates or tab.

(6) When can the individual with disabilities parking privileges be used? When transporting the person to whom the plate or placard is issued.

(7) Why is the individual with disabilities identification card issued? The identification card is issued to identify the individual with disabilities and to ensure that only those who qualify use the parking privilege. The identification card must be available for law enforcement or parking enforcement officials.

If you have just applied for and not yet received an individual with disabilities identification card, show the receipt you received at the time of application.

(8) How do I display the individual with disabilities parking placard?

(a) The placard is hung from the rearview mirror post; or

(b) The placard may be placed on the dashboard, (in the absence of the rearview mirror post).

The entire placard must be visible through the vehicle windshield.

(9) How long is the individuals with disabilities parking privilege valid?

(a) Temporary privileges are valid for up to six months from the date of issuance by the department.

(b) Permanent privileges are issued for five years and expire on the last day of the month of issuance. The expiration date can be located on the identification card or as marked on the placard. For example: If your expiration date is May 2008, your privilege will expire on May 31, 2008.

Note: License plates carry the expiration date of your vehicle registration and must be renewed annually.

(10) How do I renew or extend my individual with disabilities parking privilege?

(a) You cannot renew a temporary privilege. If your condition continues beyond the expiration date, you can obtain a new temporary individual with disabilities parking placard and identification card by submitting a new application completed and certified by a licensed physician (~~or ARNP~~), an advanced registered nurse practitioner, or a physician's assistant, as described in WAC 308-96B-010(4).

(b) You can renew a permanent privilege. The department will mail you a renewal notice before your privilege expires. Submit the completed renewal notice or a new application to most vehicle licensing offices to renew. You will receive your new parking placard(s) and new identification card through the mail.

(c) If permanent privilege has been expired more than thirty days you must submit a new application completed and certified by a licensed physician (~~or ARNP~~), an advanced registered nurse practitioner, or a physician's assistant, as described in WAC 308-96B-010.

(11) What if the individual with disabilities parking placard or identification card is lost, mutilated, destroyed, or stolen? To replace your individual with disabilities parking placard or identification card, complete and sign a statement explaining what happened to the placard or identification card. A new individual with disabilities parking placard or identification card will be issued, indicating the original expiration date. The placard or identification card being replaced are no longer valid and should be destroyed if located.

(12) What should I do with my placard and identification card when they are no longer valid? When your placard and identification card are no longer valid, they should be destroyed.

Note: If the vehicle has been reported stolen or if the department record indicates the vehicle has been stolen, the same number/letter combination will not be used. This is a law enforcement issue and is for the protection of the public.

WSR 07-20-112

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 3, 2007, 8:17 a.m., effective November 3, 2007]

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

Purpose: Rule making is required as a service to the Washington state patrol to not allow the use of WSP in the call sign of the amateur radio rules. The purpose is so that license plates will not get confused with Washington state patrol license plates.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-070.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 07-16-127 on August 1, 2007.

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

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

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

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

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

Date Adopted: October 2, 2007.

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 04-18-023, filed 8/24/04, effective 9/24/04)

WAC 308-96A-070 Amateur radio operator special license plates. (1) Who may apply for amateur radio operator vehicle special license plate(s)? Any person having a valid amateur radio operator's license may apply to the department for license plates bearing the official amateur radio call letters assigned by the Federal Communications Commission (FCC). These plates are in lieu of regular issue license plates. The department will issue only one set of plates at any one time carrying these call letters.

(2) What documents are required to receive an amateur radio operator vehicle special license plate? In addition to all other license fees required by law, the amateur radio operator must attach a copy of the current FCC license to the application. The operator must notify the department when the FCC license is canceled or expires and whether or not the operator has renewed the license. If the license has been renewed, the operator must send a copy of the new FCC license to the department.

(3) How will the amateur radio operator license plates be displayed? The amateur radio operator license plates must be displayed on a motor vehicle owned by the amateur radio operator unless the plates were issued and assigned to a vehicle prior to January 1, 1991. Prior to the January 1, 1991, date, the amateur radio operator license plates are allowed to be installed on any motor vehicle qualified under RCW 46.16.305.

(4) Are there any special fees required to obtain the amateur radio operator license plates? In addition to all other license fees required by law, each applicant for amateur radio operator license plates must pay an additional license plate fee of five dollars for the plate and applicable fees as stated in RCW 46.16.316 any time the plates are transferred to another vehicle.

(5) When are the amateur radio operator special license plates canceled? The effective date of the plate cancellation is the date the FCC license becomes invalid. Reinstatement of the plates requires the amateur radio operator to reapply for the plates, providing a copy of the valid FCC license and paying the five-dollar fee for a new plate and applicable fees as stated in RCW 46.16.316.

(6) Are there any FCC operator special license plates that will not be issued? Yes, if the call sign has WSP as part of the number letter combination.

(7) Will I ever have to exchange my amateur radio operator special license plates? Yes, the department has determined that all license plates be replaced on a seven-year vehicle license rotation schedule; however, your amateur

radio operator special license plates will be issued with your official call letters and numbers assigned to you by the F.C.C.

WSR 07-20-129
PERMANENT RULES
HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Order 07-01—Filed October 3, 2007, 11:09 a.m., effective November 3, 2007]

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

Purpose: Amendments to existing public employees benefits board (PEBB) rules are necessary to implement legislation enacted by the 2007 legislature, to implement federal and state law and to implement policy decisions adopted by the PEBB. In addition, the agency is making needed technical corrections and enhancing the clarity of PEBB rules throughout the three chapters 182-08, 182-12, and 182-16 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-12-190; and amending chapters 182-08, 182-12, and 182-16 WAC.

Statutory Authority for Adoption: RCW 41.05.160.

Adopted under notice filed as WSR 07-17-096 on August 16, 2007.

Changes Other than Editing from Proposed to Adopted Version: The following describes any change other than editing from the proposed to the adopted version:

The following proposed rules filed as WSR 07-17-096, in the supplemental rule-making notice, were withdrawn: WAC 182-08-180 The effective date of health plan enrollment will be retroactive to the loss of other coverage and WAC 182-12-171 The effective date of health plan enrollment will be the first of the month following the loss of other coverage.

The following clarifying changes were made to proposed amendments in the final rules:

WAC 182-08-015 and 182-12-109: The definition of "subscriber" was amended replacing "health plan" with "contracted vendors."

WAC 182-08-196: Redundant language was removed and clarifying language inserted to make the rule clearer.

WAC 182-08-197(3): Clarified language - "Employees who are later reemployed and become newly eligible for PEBB benefits enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:"

WAC 182-08-198 [(2)](h): "Salary reduction plan" replaces the outdated term "benefits contribution plan."

WAC 182-12-171: Corrected language - "PEBB premium payments for retiree, COBRA or an extension of PEBB insurance coverage begin to accrue the first of the month after ~~other of PEBB insurance coverage ends.~~"

WAC 182-12-128(4): Subsection (iii) is amended to read "the date when coverage was lost."

WAC 182-12-200: Replaced the term "health plan" with the term "medical plan." The deferral rule was amended to be self-referential: "Continuous enrollment must be from the

date the retiree deferred enrollment in ~~was initially eligible for~~ retiree insurance."

WAC 182-12-260 (5)(a)(i): Amended to comply with state law and to respond to public comment: "For children enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability before within sixty days of the child's attainment of age twenty."

WAC 182-12-265 (2)(c): The term "health plan" replaces the term "medical" in the last sentence. The final sentence was amended for clarity: "To enroll in a PEBB health plan, the dependent must provide satisfactory evidence of continuous enrollment in other medical coverage from the most recent open enrollment for which enrollment in PEBB ~~coverage~~ was waived."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 3, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 39, Repealed 1.

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

Date Adopted: October 3, 2007.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-010 Declaration of purpose. The general purpose of this chapter is to establish a set of rules (~~used by~~) to administer the health care authority's (HCA) public employees benefits board (PEBB) ((for designing)) employee and retiree eligibility and (~~insurance~~) PEBB benefits ((and for administration of these insurance plans by the Washington State Health Care Authority (HCA))).

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Board" means the public employees(^(?)) benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"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 (~~(sponsored)~~) medical insurance by a retiree or (~~(surviving dependent)~~) eligible survivor.

"Dependent" means a person who meets eligibility requirements (~~(set forth)~~) in WAC 182-12-260.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"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.

~~("Effective date of enrollment" means the first date on which an enrollee is entitled to receive covered benefits.~~

~~"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.~~

~~"Health carrier" has the meaning set forth at RCW 48.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and uniform dental plan.)~~

"Health plan" or "plan" means a medical (~~(and)~~) or dental (~~(coverage)~~) plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life (~~(or)~~) insurance, long-term care insurance, long-term disability insurance (~~(plan)~~), or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer (~~(and)~~), life insurance offered to employees on an optional basis, and retiree life insurance.

"Open enrollment" means a time period designated by the administrator (~~(during which enrollees)~~) when subscribers may apply to transfer their enrollment from one health (~~(carrier)~~) plan to another, enroll in medical (~~(coverage)~~) if the (~~(enrollee)~~) subscriber had previously waived such insurance coverage, or add dependents.

~~("PEBB plan" or)~~ "PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverage(~~s approved~~) or other employee benefit administered by the (~~(public employees' benefits board for eligible enrollees and their dependents)~~) PEBB benefits services program within the HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and others as defined in RCW 41.05.011.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or (~~(surviving dependent)~~) eligible sur-

ivor who has been designated by the HCA as the individual to whom the HCA (~~(and the health carrier)~~) contracted vendors will issue all notices, information, requests and premium bills on behalf of (~~(enrolled dependents)~~) enrollees.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB (~~(sponsored)~~) health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements (~~(set forth)~~) in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 02-07, filed 8/14/03, effective 9/14/03)

WAC 182-08-120 Employer contribution. The employers' contribution must be used to provide insurance coverage for the basic life insurance benefit, a basic long-term disability benefit, medical (~~(coverage)~~), and dental (~~(coverage)~~), and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage(~~s~~).

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-180 Premium payments and refunds. PEBB premium payments for retiree, COBRA or an extension of PEBB insurance coverage begin to accrue the first of the month of PEBB insurance coverage. The effective date of health plan enrollment will be retroactive to the loss of other coverage.

Premium is due for the entire month of insurance coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except when eligible for life insurance conversion.

PEBB premiums will be refunded using the following method:

(1) When a PEBB subscriber submits an enrollment change affecting eligibility, such as for example: Death, divorce, or when no longer a dependent as defined at WAC 182-12-260 no more than three months of accounting adjustments and any excess premium paid will be refunded to any individual or agency except as (~~(provided)~~) indicated in WAC 182-12-148(3).

(2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator or designee may approve a refund which does not exceed twelve months of premium (~~(provided)~~) if both of the following occur:

(a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the HCA; and

(b) Proof is provided that extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

(3) Errors resulting in an underpayment to HCA must be reimbursed by the employer or subscriber to the HCA. Upon request of an employer, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan designed not to create undue hardship on the employer or subscriber.

(4) HCA errors will be adjusted by returning the excess premium paid, if any, to the employer, subscriber, or beneficiary, as appropriate.

~~((5) Premium is due for the entire month of coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except when eligible for life insurance conversion.))~~

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-190 ~~The employer contribution ((shall be)) is set by the HCA and paid to the HCA for all eligible employees.~~ Every department, division, or agency of state government, and such county, municipal or other political subdivision, K-12 school district or educational service district that are covered under PEBB insurance coverage, ~~((shall))~~ must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions ~~((shall be))~~ are set by the HCA and are subject to the approval of the governor.

(2) Employer contributions ~~((shall))~~ must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each eligible employee in pay status eight or more hours during a calendar month or each eligible employee on leave under the federal Family and Medical Leave Act (FMLA) ~~((shall be))~~ is eligible for the employer contribution. The entire employer contribution is due and payable to HCA even if medical ~~((coverage))~~ is waived.

(4) PEBB insurance coverage for any county, municipal or other political subdivision or any K-12 school district or educational service district may be ~~((terminated))~~ canceled by HCA if the premium contributions are delinquent more than ninety days.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB benefits as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC 182-12-115.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-08-196 What happens if my health ((carrier)) plan becomes unavailable? Employees and retirees for whom the chosen health ~~((carrier))~~ plan becomes unavailable due to a change in contracting service area, ~~((the health carrier no longer contracting.))~~ or the retiree's entitlement to Medicare must select a new health plan within sixty days after notification by the PEBB benefits services program.

(1) Employees ~~((that))~~ who fail to select a new ~~((health))~~ medical or dental plan within the prescribed time period will be enrolled in ~~((the health carrier's))~~ a successor plan if one is available or will be enrolled in the Uniform Medical Plan ~~((and))~~ Preferred Provider Organization or the Uniform Dental Plan with existing dependent enrollment ~~((by default)).~~

(2) Retirees and ~~((surviving dependents))~~ survivors eligible under WAC 182-12-250 or 182-12-265 ~~((that))~~ who fail to select a new health plan within the prescribed time period will be enrolled in ~~((the health carrier's))~~ a successor plan if one is available or will be enrolled in the Uniform Medical Plan Preferred Provider Organization and the Uniform Dental Plan ~~((, except that)).~~ However, retirees enrolled in Medicare Parts A and B, and who enroll in Medicare Part D may be ~~((defaulted))~~ assigned to a PEBB ~~((sponsored))~~ Medicare plan that does not include a pharmacy benefit.

Any ~~((employee or retiree defaulted to a carrier's successor plan, the Uniform Medical Plan or the Uniform Dental Plan))~~ subscriber assigned to a health plan as described in this rule may not change health plans until the next open enrollment except as ~~((set forth))~~ allowed in WAC 182-08-198.

(3) Enrollees continuing PEBB health plan ~~((coverage as provided in))~~ enrollment under WAC 182-12-133, 182-12-148 or 182-12-270 (2) or (3) must select a new health plan no later than sixty days after notification by the PEBB benefits services program or their health plan ~~((coverage))~~ enrollment will ~~((terminate))~~ end as of the last day of the month in which the plan is no longer available.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-08-197 ~~((Newly eligible))~~ Employees must select insurance coverages within thirty-one days of the date they become eligible ((to apply for coverage)) for PEBB benefits. (1) Employees who are newly eligible ((employees)) for PEBB benefits must ((select a medical and dental plan (if dental is available based on employer participation in PEBB insurance coverages))) complete an enrollment form indicating their health plan choice and return it to their employing agency no later than thirty-one days after they become eligible ((to apply)) for ((coverage)) PEBB benefits, as stated in WAC 182-12-115. Newly eligible employees who do not ((select a)) return an enrollment form to their employing agency indicating their medical and dental ((plan)) choice within thirty-one days will be ((defaulted to Uniform Medical Plan Preferred Provider Organization and Uniform Dental Plan)) enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan Preferred Provider Organization; and

(b) Dental enrollment (if the employing agency participates in PEBB dental) will be Uniform Dental Plan.

(2) Newly eligible employees may enroll in optional insurance coverage (except for employees of agencies that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.

(d) Employees may apply for optional life, long-term disability, and long-term care insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) When an employee's employment ends, insurance coverage ends (WAC 182-12-131). Employees who are later reemployed and become newly eligible for PEBB benefits enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one agency to another agency without a break in state service. This includes movement of employees between any agencies described as eligible groups in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution-based enrollment in PEBB insurance coverage.

(c) When employees continue insurance coverage under WAC 182-12-133 (1) or (2) and are reemployed into a benefits eligible position before the end of the maximum number of months allowed for continuing PEBB health plan enrollment. Employees who are eligible to continue optional life or optional long-term disability but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to employment.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-08-198 When may ~~(an enrollee)~~ a subscriber change health plans? (1) ~~(Enrollees)~~ Subscribers may change health plans during the annual open enrollment. The ~~(enrollee)~~ subscriber must request the health plan change no later than the end of the open enrollment period. Enrollment in the new health plan(’s coverage) will begin the first day of January after open enrollment.

(2) ~~(Enrollees)~~ Subscribers may change health plans outside of the annual open enrollment period under ~~(some)~~ the circumstances indicated below. To make a health plan change, the ~~(enrollee)~~ subscriber must send a completed enrollment form (and a completed disenrollment form, if required) to the PEBB benefits services program no later than sixty days after the event occurs. Enrollment in the new health plan(’s coverage) will begin the first day of the month after the PEBB benefits services program receives the form(s). These are the circumstances:

(a) Enrollees ~~(may change health plans if they)~~ move and their current health plan is not available in their new location. If the ~~(enrollee)~~ subscriber does not select a new health plan, the PEBB benefits services program ~~(will automatically)~~ may enroll them in the Uniform Medical Plan Preferred Provider Organization or Uniform Dental Plan.

(b) Enrollees ~~(may change health plans if they)~~ move and a health plan that was not available to them before is available to them in the new location. The ~~(enrollee)~~ subscriber may only choose a newly available health plan.

(c) ~~(Enrollees)~~ Subscribers may change health plans if a court order requires the ~~(enrollee)~~ subscriber to provide insurance coverage for an eligible spouse, ~~(same-sex)~~ qualified domestic partner, or child and the ~~(enrollee)~~ subscriber adds the dependent to their insurance coverage.

(d) Seasonal employees whose off-season is during the annual open enrollment period may select a new health plan upon their return to work.

(e) ~~(Employees)~~ Subscribers may change health plans when they enroll in PEBB retiree insurance coverage.

(f) ~~(Enrollees)~~ Subscribers may change health plans when they or an eligible dependent becomes entitled to Medicare or enrolls in a Medicare Part D plan.

(g) ~~(Enrollees)~~ Subscribers may not change their health plan if their or an enrolled dependent's physician stops participation with the ~~(enrollee's)~~ subscriber's health plan unless the PEBB appeals manager determines that a continuity of care issue exists. However, if the employee is having premiums taken from payroll on a pretax basis a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300. The PEBB appeals manager will use criteria that include but are not limited to the following in determining if a continuity of care issue exists:

- (i) Active cancer treatment; or
- (ii) Recent transplant (within the last twelve months); or
- (iii) Scheduled surgery within the next sixty days; or
- (iv) Major surgery within the previous sixty days; or
- (v) Third trimester of pregnancy; or
- (vi) Language barrier.

~~((h) Enrollees may change health plans if they reach their medical plan's lifetime maximum.))~~

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment? When an eligible employee's employment ceases with an employing agency at any time ~~(prior to)~~ before the end of the month for which a premium contribution is due and that employee transfers to another agency, the losing agency is responsible for the payment of the contribution for that employee for that month. The receiving agency would not be liable for any employer contribution for that eligible employee until the month following the transfer.

AMENDATORY SECTION (Amending Order 02-07, filed 8/14/03, effective 9/14/03)

WAC 182-08-220 Advertising or promotion of PEBB ~~(sponsored)~~ benefit plans. (1) In order to assure equal and unbiased representation of PEBB ~~(plans, any promotion of these plans shall)~~ benefits, contracted vendors must comply with all of the following:

(a) All materials describing PEBB ~~((plan))~~ benefits ~~((shall))~~ must be prepared by or approved by the HCA ~~((prior to))~~ before use.

(b) Distribution or mailing of all ~~((plan))~~ benefit descriptions ~~((shall))~~ must be performed by or under the direction of the HCA.

(c) All media announcements or advertising by a ~~((carrier))~~ contracted vendor which include any mention of the "public employees benefits board," "health care authority" or any reference to ~~((coverage))~~ benefits for "state employees or retirees" or any group of employees covered by PEBB ~~((plans))~~ benefits, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a PEBB contracted ~~((carrier))~~ vendor or subcontractor may result in contract termination by the HCA, refusal to continue or renew a contract with the noncomplying party, or both.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-230 Participation in PEBB benefits by employer groups, K-12 school districts and educational service districts. This section applies to all employer groups, K-12 school districts and educational service districts participating in PEBB insurance coverage~~((s))~~.

(1) For purposes of this section, "employer group" means those employee organizations representing state civil service employees, blind vendors, county, municipality, and political subdivisions that meet the participation requirements of WAC 182-12-111 (2), (3) and (4) and that participate in PEBB insurance coverage~~((s))~~.

(2)(a) Each employer group ~~((shall))~~ must determine an employee's eligibility for PEBB insurance coverage in accordance with the applicable sections of chapter 182-12 WAC, RCW 41.04.205, and chapter 41.05 RCW.

(b) Each employer group, K-12 school district and educational service district applying for participation in PEBB insurance coverage ~~((shall))~~ must submit required documentation and meet all participation requirements ~~((set forth))~~ in the then-current *Introduction to PEBB Coverage K-12 and Employer Groups* booklet(s).

(3)(a) Each employer group, K-12 school district or educational service district applying for participation in PEBB insurance coverage ~~((shall))~~ must sign an interlocal agreement with the HCA.

(b) Each interlocal agreement ~~((shall))~~ must be renewed no less frequently than once in every two-year period.

(4) At least twenty days ~~((prior to))~~ before the premium due date, the HCA ~~((shall))~~ will cause each employer group, K-12 school district or educational service district to be sent a monthly billing statement. The statement of premium due will be based upon the enrollment information provided by the employer group, K-12 school district or educational service district.

(a) Changes in enrollment status ~~((shall))~~ must be submitted to the HCA ~~((prior to))~~ before the twentieth day of the month ~~((during which))~~ when the change occurs. Changes

submitted after the twentieth day of each month may not be reflected on the billing statement until the following month.

(b) Changes submitted more than one month late ~~((shall))~~ must be accompanied by a full explanation of the circumstances of the late notification.

(5) An employer group, K-12 school district or educational service district ~~((shall))~~ must remit the monthly premium as billed or as reconciled by it.

(a) If an employer group, K-12 school district or educational service district determines that the invoiced amount requires one or more changes, they may adjust the remittance only if an insurance eligibility adjustment form detailing the adjustment accompanies the remittance. The proper form for reporting adjustments will be attached to the interlocal agreement as Exhibit A.

(b) Each employer group, K-12 school district or educational service district is solely responsible for the accuracy of the amount remitted and the completeness and accuracy of the insurance eligibility adjustment form.

(6) Each employer group, K-12 school district or educational service district ~~((shall))~~ must remit the entire monthly premium due including the employee share, if any. The employer group, K-12 school district or educational service district is solely responsible for the collection of any employee share of the premium. The employer ~~((shall))~~ must not withhold portions of the monthly premium due because it has failed to collect the entire employee share.

(7) Nonpayment of the full premium when due will subject the employer group, K-12 school district or educational service district to disenrollment and termination of each employee of the group.

(a) ~~((Prior to))~~ Before termination for nonpayment of premium, the HCA ~~((shall cause))~~ will send a notice of overdue premium ~~((to be sent))~~ to the employer group, K-12 school district or educational service district which notice will provide a one-month grace period for payment of all overdue premium.

(b) An employer group, K-12 school district or educational service district that does not remit the entirety of its overdue premium no later than the last day of the grace period will be disenrolled effective the last day of the last month for which premium has been paid in full.

(c) Upon disenrollment, notification will be sent to both the employer group, K-12 school district or educational service district and each affected employee.

(d) Employer groups, K-12 school districts or educational service districts disenrolled due to nonpayment of premium ~~((shall))~~ have the right to a dispute resolution hearing in accordance with the terms of the interlocal agreement.

(e) Employees ~~((terminated))~~ canceled due to the nonpayment of premium by the employer group, K-12 school district or educational service district are not eligible for continuation of group health plan coverage according to the terms of the Consolidated Omnibus Budget Reconciliation Act (COBRA). ~~((Terminated))~~ Employees ~~((shall))~~ whose coverage is canceled have conversion rights to an individual insurance policy as provided for by the employer group, K-12 school district or educational service district.

(f) Claims incurred by ~~((terminated))~~ employees of a disenrolled group after the effective date of disenrollment will not be covered.

(g) The employer group, K-12 school district or educational service district is solely responsible for refunding any employee share paid by the employee to the employer group, K-12 school district or educational service district and not remitted to the HCA.

(8) A disenrolled employer group, K-12 school district or educational service district may apply for reinstatement in PEBB insurance coverage~~((s))~~ under the following conditions:

(a) Reinstatement must be requested and all delinquent premium paid in full no later than ninety days after the date the delinquent premium was first due, as well as a reinstatement fee of one thousand dollars.

(b) Reinstatement requested more than ninety days after the effective date of disenrollment will be denied.

(c) Employer groups, K-12 school districts or educational service districts may be reinstated only once in any two-year period and will be subject to immediate disenrollment if, after the effective date of any such reinstatement, subsequent premiums become more than thirty days delinquent.

(9) Upon written petition by the employer group, K-12 school district or educational service district disenrollment of an employer group, K-12 school district or educational service district or denial of reinstatement may be waived by the administrator upon a showing of good cause.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-108 Purpose. The purpose of this chapter is to establish eligibility criteria for and effective date of enrollment in the public employees~~((l))~~ benefits board (PEBB) approved benefits.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Board" means the public employees~~((l))~~ benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"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 ~~((sponsored))~~ medical ~~((coverage))~~ insurance by a retiree or ~~((surviving dependent))~~ eligible survivor.

"Dependent" means a person who meets eligibility requirements ~~((set forth))~~ in WAC 182-12-260.

"Effective date of enrollment" means the first date ~~((on which))~~ when an enrollee is entitled to receive covered benefits.

"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.

~~(("Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.~~

~~"Health carrier" has the meaning set forth at RCW 43.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and the uniform dental plan.)~~

"Health plan" or "plan" means a medical ~~((and dental coverages))~~ or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, ~~((or))~~ long-term care insurance, long-term disability insurance ~~((plan))~~, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer ~~((and))~~, life insurance offered to employees on an optional basis, and retiree life insurance.

"Open enrollment" means a time period designated by the administrator ~~((during which enrollees))~~ when subscribers may apply to transfer their enrollment from one health ~~((carrier))~~ plan to another, enroll in medical ~~((coverage))~~ if the enrollee had previously waived such insurance coverage or add dependents.

~~(("PEBB plan" or))~~ "PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverage~~((s approved))~~ or other employee benefit administered by the ~~((public employees' benefits board for eligible enrollees and their dependents))~~ PEBB benefits services program within HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and others as defined in RCW 41.05.011.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or ~~((surviving dependent))~~ eligible survivor who has been designated by the HCA as the individual to whom the HCA and ~~((the health carrier))~~ contractual vendors will issue all notices, information, requests and premium bills on behalf of ~~((enrolled dependents))~~ enrollees.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB ~~((sponsored))~~ health plan by an employee (as ~~((set forth))~~ defined in WAC 182-12-115) or a

dependent who meets eligibility requirements (~~(set forth)~~) in WAC 182-12-260.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-111 Eligible entities and individuals.

The following entities and individuals shall be eligible (~~(to participate in)~~) for PEBB insurance coverage(s) subject to the terms and conditions set forth below:

(1) State agencies. Every department, division, or separate agency of state government, including all state higher education institutions, the higher education coordinating board, and the state board for community and technical colleges is required to participate in all PEBB (~~(approved insurance coverage)~~) benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64-.270.

(a) Employees of technical colleges previously enrolled in a benefits trust may (~~(terminate)~~) end PEBB (~~(insurance coverage)~~) benefits by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to (~~(terminate)~~) end PEBB (~~(coverage)~~) benefits have a one-time reenrollment option after a five year wait. Employees of a bargaining unit may (~~(terminate)~~) end PEBB benefit participation only as an entire bargaining unit. All administrative or managerial employees may (~~(terminate)~~) end PEBB participation only as an entire unit.

(b) Community and technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) Employee organizations. Employee organizations representing state civil service employees and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for (~~(the purpose of)~~) purchasing insurance benefits, may participate in PEBB (~~(sponsored)~~) insurance coverages at the option of each employee organization provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) (~~(The)~~) PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application (~~(to participate in)~~) for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB (~~(plan)~~) insurance coverage participation (~~(for a minimum of)~~) at least one full year, and may (~~(terminate)~~) end participation only at the end of a plan year.

(e) The terms and conditions for the payment of the insurance premiums (~~(shall)~~) must be (~~(set forth)~~) in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents must be the same as the requirements for dependents of the state employees and retirees as (~~(set forth)~~) in WAC 182-12-260.

(g) The legislative authority or the board of directors (~~(shall provide)~~) must give the HCA (~~(with)~~) written notice of its intent to (~~(terminate)~~) end PEBB (~~(plan)~~) insurance coverage participation (~~(no fewer than)~~) at least thirty days (~~(prior to)~~) before the effective date of termination. If the employee organization (~~(terminates coverage in)~~) ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible (~~(to participate in)~~) for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(3) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance coverage.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB insurance coverage.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees (~~(as set forth)~~) in WAC 182-12-260.

(4) Local governments: Employees of a county, municipality, or other political subdivision of the state may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application (~~(to participate in)~~)

for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB ~~((plan))~~ insurance coverage participation ~~((for a minimum of))~~ at least one full year, and may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums must be ~~((set forth))~~ in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents of local government employees must be the same as the requirements for dependents of state employees and retirees ~~((as set forth))~~ in WAC 182-12-260.

(g) The legislative authority or the board of directors ~~((shall provide))~~ must give the HCA ~~((with))~~ written notice of its intent to ~~((terminate))~~ end PEBB ~~((plan))~~ insurance coverage participation ~~((no fewer than))~~ at least thirty days ~~((prior to))~~ before the effective date of termination. If a county, municipality, or political subdivision ~~((terminates))~~ ends coverage in PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible ~~((to participate in))~~ for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(5) K-12 school districts and educational service districts: Employees of school districts or educational service districts may participate in PEBB insurance ~~((programs))~~ coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the K-12 school district or educational service district meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group. For ~~((the purpose of))~~ enrolling by bargaining unit, all nonrepresented employees will be considered a single bargaining unit.

(b) The school district or educational service district must submit an application together with employee census data and, if available, prior claims experience of the entity to the HCA. The application ~~((to participate in))~~ for the PEBB insurance coverage is subject to the approval of the HCA.

(c) The school district or educational service district must agree to participate in all PEBB insurance coverage. The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(d) The school district or educational service district must maintain its PEBB ~~((plan))~~ insurance coverage participation ~~((for a minimum of))~~ at least one full year, and may ~~((terminate))~~ end participation only at the end of the plan year.

(e) Beginning September 1, 2003, the HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health ~~((carrier))~~ plan and family size as would be charged to state employees for each participating school district or educational service district. Each participating school district or

educational service district must agree to collect an employee premium by health ~~((carrier))~~ plan and family size that is not less than that paid by state employees. The eligibility requirements for employees will be the same as those for state employees as defined in WAC 182-12-115.

(f) The eligibility requirements for dependents of K-12 school district and educational service district employees must be the same as the requirements for dependents of the state employees and retirees ~~((as set forth))~~ in WAC 182-12-260.

(g) The school district or educational service district must ~~((provide))~~ give the HCA ~~((with))~~ written notice of its intent to ~~((terminate))~~ end PEBB ~~((plan))~~ insurance coverage participation ~~((no fewer than))~~ at least thirty days ~~((prior to))~~ before the effective date of termination, and may ~~((terminate))~~ end participation only at the end of a plan year.

(6) Eligible nonemployees:

(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans ~~((coverage))~~ while enrolled in that program.

(b) School board members or students eligible to participate under RCW 28A.400.350 may participate in PEBB insurance coverage as long as they remain eligible under that section.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-112 Insurance eligibility for higher education. For ~~((the purpose of))~~ insurance eligibility, the HCA considers the higher education personnel board, the council for postsecondary education, and the state board for community colleges to be higher education agencies.

AMENDATORY SECTION (Amending Order 06-01, filed 5/25/06, effective 6/25/06)

WAC 182-12-115 Eligible employees. The following employees of state government, higher education, participating K-12 school districts, educational service districts, political subdivisions and employee organizations representing state civil service workers are eligible for PEBB insurance coverage.

A person whose employment situation can be described by more than one of the eligibility categories in subsections (1) through (7) of this section shall have his or her eligibility determined solely by the criteria of the one category that most closely describes his or her employment situation.

(1) "Permanent employees." Those who work at least half-time per month and are expected to be employed for more than six months. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, insurance coverage begins on the date of employment.

(2) "Nonpermanent employees." Those who work at least half-time and are expected to be employed for no more than six months. These employees are eligible for benefits on the first day of the seventh month of half-time or more

employment. Insurance coverage begins on the first day of the seventh month following the date of employment.

(3) "Career seasonal employees." Those who work at least half-time per month during a designated season for a minimum of three months but less than twelve months per year and who have an understanding of continued employment season after season. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, insurance coverage begins on the date of employment. Career seasonal employees who work at least half-time per month for a season that extends for nine or more months are eligible for the employer contribution during the break between seasons of employment. However, career seasonal employees who work at least half-time per month for less than nine months in a season are not eligible for the employer contribution during the break between seasons of employment but may be eligible to continue insurance coverage by self-paying premiums.

(4) "Instructional year employees." Employees who work half-time or more on an instructional year (school year) or equivalent nine-month basis. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of the month, insurance coverage begins on the date of employment. These employees are eligible to receive the employer contribution for insurance coverage during the off-season following each instructional year period of employment. The provisions of this subsection do not apply to persons employed on a quarter-to-quarter or semester-to-semester contract basis.

(5)(a) "Part-time faculty" and "part-time academic employees." Employees who are employed on a quarter/semester to quarter/semester basis are eligible for insurance coverage (~~(beginning with)~~) starting the second consecutive quarter/semester of half-time or more employment at one or more state institutions of higher education including one or more college districts. These employees are eligible for benefits the first day of the second consecutive quarter/semester of half-time or more employment. Insurance coverage begins on the first day of the month following the beginning of the second 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, insurance coverage begins at the beginning of the second consecutive quarter/semester.

~~(For the purpose of determining)~~ To determine eligibility for part-time faculty and part-time academic employees, employers must:

(i) Consider spring and fall as consecutive quarters/semesters when first establishing eligibility; and

(ii) Determine "half-time or more employment" based on each institution's definition of "full-time"; and

(iii) At the beginning of each quarter/semester notify, in writing, all current and newly hired part-time faculty and part-time academic employees of their potential right to benefits under this subsection; and

(iv) Where concurrent employment at more than one state higher education institution is used to determine total

employment of half-time or more, the employing institutions will arrange to prorate the cost of the employer insurance contribution based on the employment at each institution. However, if the employee would be eligible by virtue of employment at one institution, that institution will pay the entire cost of the employer contribution regardless of other higher education employment. In cases where the cost of the contribution is prorated between institutions, one institution will forward the entire contribution monthly to HCA.

Part-time faculty and part-time academic employees employed at more than one state institution of higher education are responsible for notifying each employer quarterly, in writing, of the employee's multiple employment. In no case will retroactive insurance coverage be permitted or employer contribution paid to HCA if an employee (~~(fails to)~~) does not inform all of his(~~(A)~~) or her employing institutions about employment at all institutions within the current quarter.

Once enrolled, if a part-time faculty or part-time academic employee does not work at least a total of half-time in one or more state institutions of higher education, eligibility for the employer contribution ceases.

(b) Part-time academic employees of community and technical colleges who have a reasonable expectation of continued employment at one or more college districts shall be eligible for the employer contribution for benefits during the period between the end of the spring quarter and the beginning of the fall quarter, or other quarter break period, if they meet the following conditions of this subsection (5)(b).

Part-time academic employees who work half-time or more in each instructional year quarter of an academic year, or equivalent nine-month season, in a single college district or multiple college districts, as determined from the payroll records of the employing community or technical college district(s), are eligible for the employer contribution for health benefits during the quarter or off season period immediately following the end of one academic year or equivalent nine-month season.

For (~~(the purposes of)~~) this subsection (5)(b):

(i) "Academic employee" (~~(has the meaning set forth)~~) is defined in RCW 28B.50.489(3).

(ii) "Academic year" means fall, winter, and spring quarters in a community or technical college, as determined from the payroll records of the employing college district or college districts.

(iii) "Equivalent nine-month seasonal basis" means a nine consecutive month period of employment at half-time or more by a single college district or multiple college districts, as determined from the payroll records of the employing college district(s).

(iv) "Health benefits" means the particular medical and/or dental coverage in place at the end of the academic year or equivalent nine-month season. Changes to health benefits may be made only as (~~(set forth)~~) allowed in chapter 182-08 WAC or during an annual open enrollment period.

(c) Part-time academic employees who have established eligibility, as determined from the payroll records of the employing community or technical college districts, for employer contributions for benefits and who have worked an average of half-time or more in each of the two preceding academic years, through employment at one or more commu-

nity or technical college districts, are eligible for continuation of employer contributions for the subsequent summer period between the end of the spring quarter and the beginning of the fall quarter.

(d) Once a part-time academic employee meets the criteria in (c) of this subsection, the employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least ~~((three of the four))~~ two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year. Benefits provided under this subsection (5)(d) cease ~~((at the end of the academic year))~~ if this criteria is not met. Continuous benefits shall be reinstated once the employee reestablishes eligibility under (c) of this subsection.

(e) As used in (c) and (d) of this subsection, "academic year" means the summer, fall, winter, and spring quarters. As used in this subsection, "academic employees" has the meaning provided in RCW 28B.50.489.

(f) To be eligible for maintenance of benefits through averaging pursuant to (c) and (d) of this subsection, part-time academic employees must notify their employers of their potential eligibility.

(6) "Appointed and elected officials." Legislators are eligible ~~((to apply for coverage))~~ for 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 ~~((to apply for coverage))~~ for benefits on the date their term begins or they take the oath of office, whichever occurs first. Insurance coverage for legislators begins on the first day of the month following the date their term begins. If the term begins on the first working day of the month, insurance coverage begins on the first day of their term. Insurance coverage begins for all other elected and full-time appointed officials of the legislative and executive branches of state government on the first day of the month following the date their term begins, or the first day of the month following the date they take the oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of the month, insurance coverage begins on the date the term begins, or the oath of office is taken.

(7) "Judges." Justices of the supreme court and judges of courts of appeals and the superior courts become eligible ~~((to apply for coverage))~~ for benefits on the date they take the oath of office. Insurance coverage begins on the first day of the month following the date their term begins, or the first day of the month following the date they take oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of a month, insurance coverage begins on the date the term begins, or the oath of office is taken.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-116 Who is eligible ~~((to participate in))~~ for the PEBB flexible spending account plan? Beginning January 1, 2006, all employees of public four-year institutions of higher education, of the state community and technical colleges and of the state board for community and techni-

cal colleges who are eligible for PEBB ~~((insurance))~~ benefits, as defined in WAC 182-12-115, are eligible ~~((to participate in))~~ for the PEBB medical flexible spending account plan. Beginning July 1, 2006, all employees of state agencies who are eligible for PEBB ~~((insurance))~~ benefits, are eligible ~~((to participate in))~~ for the PEBB medical flexible spending account plan.

If an employee terminates employment after becoming a plan participant and later on in the same plan year is hired into a new position that is eligible for PEBB ~~((insurance))~~ benefits, the employee may not resume participation in the PEBB medical flexible spending account until the beginning of the next plan year.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-123 Dual ~~((eligibility))~~ enrollment is prohibited. PEBB health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals ~~((that))~~ who have more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") are limited to one enrollment.

(2) ~~((One insurance-))~~ An eligible employee may waive medical ~~((coverage for himself or herself))~~ and enroll as a ~~((spouse or))~~ dependent on the coverage of his or her eligible spouse or qualified domestic partner as stated in WAC 182-12-128. ~~((This waiver option is not available for other insurance coverages.))~~

(3) ~~((The following examples describe typical situations of dual eligibility. These are not the only situations where dual eligibility may arise. These examples are provided as illustrations only.))~~

~~((a) A husband and wife who are both insurance-eligible and employed by PEBB-participating employers, such as state agencies, may enroll only in a health plan as an employee but not also as a dependent. That is, the husband may enroll only under his employing agency and the wife may enroll only under her employing agency but not also as dependents of each other. In the alternative, one spouse may waive medical coverage as an employee and enroll as a dependent on the medical coverage of the other spouse.))~~

~~((b) A dependent child that is))~~ Children eligible for ~~((coverage))~~ medical and dental under two or more parents or stepparents, who are employed by PEBB-participating employers, may be enrolled as a dependent under the health plan ~~((coverage))~~ of one parent or stepparent, but not more than one.

~~((c))~~ (4) An employee employed in ~~((an insurance-))~~ a benefits eligible position by more than one PEBB-participating employer may enroll only under one employer. The employee may choose to enroll in ~~((a health plan))~~ PEBB benefits under the employer that:

~~((i))~~ (a) Offers the most favorable cost-sharing arrangement; or

~~((ii))~~ (b) Employed the employee for the longer period of time.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-128 When may an employee waive ((enrollment in PEBB insurance coverage)) health plan enrollment for their self or their eligible dependent? (1) ((Employees eligible for PEBB insurance coverage have the option of waiving health plan coverage if they are covered by other health plan coverage. If an employee waives health plan coverage, such coverage is automatically waived for all eligible dependents. An employee may choose to enroll only himself or herself, and waive either the medical or dental portion of the health plan coverage, or both, for any or all dependents. In order to waive enrollment, the employee must complete an enrollment form and list all enrollees for whom coverage is being waived.)) Employees may waive medical if they have other comprehensive group medical coverage. To waive medical, the employee must complete an enrollment/change form. If an employee waives medical, then medical is automatically waived for all eligible dependents.

(2) An employee may only waive ((the)) medical ((portion of health plan coverage)). The employee must remain enrolled in ((the)) dental, life and ((LTD insurance coverages)) long-term disability.

(3) ((If the medical portion of the health plan coverage is waived, an otherwise eligible enrollee may not rescind the waiver and reenroll in the medical portion of the health plan coverage except during the following times:

(a) The next open enrollment period; or

(b) Within sixty days of loss of other medical coverage if proof of enrollment in other comprehensive group medical coverage is submitted and demonstrates that:

(i) Enrollment in other medical coverage was continuous from the most recent open enrollment period for which PEBB medical coverage was waived; and

(ii) The period between loss of the other medical coverage and application for PEBB medical coverage is sixty days or less.)) An employee may waive medical or dental, or both, for any or all eligible dependents.

(4) ((If the dental portion of the health plan coverage is waived, an otherwise eligible dependent may not enroll in PEBB dental coverage except)) Once health plan enrollment is waived, enrollment is only allowed during the following times:

(a) The next open enrollment period; ((or))

(b) ((Within sixty days after loss of other dental coverage if proof of enrollment in other dental coverage is submitted and demonstrates that:)) After losing other health insurance. The employee must provide evidence:

(i) ((Enrollment in the other dental coverage was continuous from the most recent open enrollment period for which dental was waived; and)) Other health insurance was comprehensive group coverage;

(ii) ((The period between loss of the other dental and application for PEBB dental coverage is sixty days or less.)) Enrollment was continuous from the most recent PEBB open enrollment period; and

(iii) The date when coverage was lost.

Application to enroll in a PEBB health plan must be made no later than sixty days after the date the other health insurance was lost;

((5) The employee and eligible dependents may have an additional opportunity to reenroll only as a result of addition of a new dependent due to marriage, birth, adoption, or placement for adoption, provided that advice of such enrollment is provided to HCA within thirty one days after the marriage or within sixty days after the)) (c) After acquiring a new dependent. Application for enrollment must be made no later than sixty days after acquiring the new dependent through marriage, establishment of a qualified domestic partnership, birth, adoption or placement for adoption ((of a child)).

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-131 When does employer paid insurance coverage end? PEBB medical, dental and life insurance ((coverages)) for a terminated employee, spouse, qualified ((same sex)) domestic partner or ((dependent)) child ceases at 12:00 midnight, the last day of the month in which the ((employee or dependent)) enrollee is eligible. Basic long-term disability ((coverage)) insurance ceases at 12:00 midnight the date employment ((terminates)) ends or immediately upon the death of the employee.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-133 What options for continuing coverage are available to employees when they are no longer eligible for PEBB insurance coverage paid for by their employer? Eligible employees covered by PEBB insurance coverage have options for providing continued coverage for themselves and their dependents during temporary or permanent loss of eligibility. Except in the case of approved family and medical leave, and except as otherwise provided, only employees in pay status eight or more hours per month are eligible to receive the employer contribution.

(1) When an employee is on leave without pay due to an event described in (a) through (f) of this subsection, insurance coverage may be continued at the group rate by self-paying premiums. Employees may self-pay for a maximum of twenty-nine months. The number of months that an employee self-pays premium during a period of leave without pay will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave may continue long-term disability insurance. The following types of leave qualify to continue coverage under this provision:

(a) The employee is on authorized leave without pay;

(b) The employee is laid off because of a reduction in force (RIF);

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is applying for disability retirement;

(e) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); ((however, self-payment of life insurance is limited to twelve

months from the date the employee is called to active duty;) or

(f) The employee is on approved educational leave.

(2) Part-time faculty and part-time academic employees may self-pay premium at the group rate between periods of eligibility for a maximum of eighteen months. (~~Part-time faculty~~) These employees may continue any combination of medical, dental and life insurance.

(3) The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives enrollees the right to continue (~~group~~) medical and dental (~~coverage~~) for a period of eighteen to (~~thirty-six~~) twenty-nine months when they lose eligibility due to one of the following qualifying events.

(a) Termination of employment.

(b) The employee's hours are reduced to the extent of losing eligibility.

(4) Employees who are approved for leave under the federal Family and Medical Leave Act (FMLA) are eligible to receive the employer contribution toward premium for up to twelve weeks, as provided in WAC 182-12-138.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-136 May an employee on approved educational leave waive PEBB health plan 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 coverage provided in WAC 182-12-133 who obtain comprehensive health plan coverage under another group plan may waive continuance of such coverage for each full calendar month in which they maintain coverage under the other comprehensive group health plan. These employees have the right to reenroll in a PEBB health plan (~~coverage~~) effective the first day of the month after the date the other comprehensive group health plan coverage (~~terminates~~) ends, provided (~~proof~~) evidence of such other comprehensive group health plan coverage is provided to the (~~HCA~~) PEBB benefits services program upon application for reenrollment.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-138 If an employee is approved for family and medical leave, what (~~PEBB~~) insurance coverage may be continued? Employees on leave under the federal Family and Medical Leave Act (FMLA) may continue to receive up to twelve weeks of employer-paid (~~group~~) medical, dental, basic life, and basic long-term disability insurance while on family and medical leave and may also continue current optional life and long-term disability. All employee premium amounts associated with insurance coverage must be paid monthly as they become due. If premiums are more than sixty days delinquent, insurance coverage will (~~be terminated~~) end as of the last day of the month of fully paid coverage.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-141 If I revert from an eligible position to an ineligible position what happens to my insurance coverage? Employees who revert to a position that is ineligible for employer contribution toward insurance coverage may continue enrollment in a PEBB health plan (~~coverage~~) by self-paying premium for up to eighteen months (and in some cases up to twenty-nine months) under the same terms as an employee who is granted leave without pay.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-146 (~~PEBB~~) Continuing health plan coverage under COBRA. Enrollees and eligible dependents who become ineligible for (~~health plan~~) coverage and who qualify for continued coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue their (~~plan coverage~~) medical and dental by self-payment of health plan premiums in accordance with COBRA statutes and regulations.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-148 May an employee continue PEBB insurance coverage during their appeal of dismissal? (1) Employees awaiting hearing of a dismissal action before any of the following may continue their insurance coverage by self-payment of premium on the same terms as an employee who is granted leave without pay.

(a) For an appeal filed on or before June 30, 2005, the personnel appeals board or any court.

(b) For an appeal filed on or after July 1, 2005, the personnel resources board, an arbitrator, a grievance or appeals committee established under a collective bargaining agreement for union represented employees.

(2) If the dismissal is upheld, all insurance coverage (~~shall terminate~~) will end at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is earlier.

(3)(a) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid insurance coverage retroactively, the employer 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.

(b) HCA will refund to the employee any premiums the employee paid that may be provided for as a result of the reinstatement of the employer contribution only if the employee makes retroactive payment of any employee contribution amounts associated with the insurance coverage. In the alternative, at the request of the employee, HCA may deduct the employee's contribution from the refund of any premiums self-paid by the employee during the appeal period.

(c) All optional life and long-term disability 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 optional coverage 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 restore such optional coverage.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-171 ((Eligible retirees)) When are retiring employees eligible to enroll in retiree insurance?

(1) ((Eligible)) Procedural requirements. Retiring employees ((who terminate public employment after becoming vested in a Washington state sponsored retirement system are eligible to continue PEBB sponsored insurance coverage as a retiree provided the following requirements in (a) and (b) of this subsection as well as one of (c) through (g) of this subsection are met:)) must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) ((If the retiree or enrolled dependent(s) is entitled to Medicare and the retiree retired after July 1, 1991, the Medicare entitled retiree or Medicare entitled dependent must enroll in both Medicare Parts A and B; and)) The employee must submit an election form to enroll or defer insurance coverage within sixty days after their employer paid or COBRA coverage ends. Employees who cancel PEBB health plan coverage or do not enroll in a PEBB health plan at retirement are only eligible to enroll if they have deferred enrollment and maintained comprehensive coverage as defined in WAC 182-12-200 or 182-12-205.

(b) The ((retiring employee must submit an election form to enroll or defer health plan coverage within sixty days after their employer paid or continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends and is eligible for retiree benefits under one or more of the programs described in (c), (d), (e), (f), or (g) of this subsection;

(c) Except as provided in (e)(vii) of this subsection, the person immediately upon termination begins receiving a monthly retirement income benefit from one or more of the following retirement systems:

(i) Law enforcement officers' and fire fighters' retirement system Plan 1 or 2;

(ii) Public employees' retirement system Plan 1 or 2;

(iii) Public safety employees' retirement system;

(iv) School employees' retirement system Plan 2;

(v) State judges/judicial retirement system;

(vi) Teachers' retirement system Plan 1 or 2; or

(vii) Washington state patrol retirement system.

(viii) Provided, however, that a lump sum payment may be received in lieu of a monthly retiree income benefit payment under RCW 41.26.425(1), 41.32.762(1), 41.32.870(1), 41.35.410(1), 41.35.670(1), 41.37.200(1), 41.40.625(1) or 41.40.815(1).

(d) The person is at least fifty five years of age with at least ten years of state of Washington service credit and a member of one of the following retirement systems:

(i) Public employees' retirement system Plan 3;

(ii) School employees' retirement system Plan 3; or

(iii) Teachers' retirement system Plan 3.

(e) The person is a member of a state of Washington higher education retirement plan, and is:

(i) At least fifty five years of age with at least ten years service; or

(ii) At least sixty two years of age; or

(iii) Immediately begins receiving a monthly retirement income benefit.

(f) If not retiring under the public employees' retirement system, the person would have been eligible for a monthly retirement income benefit because of age and years of service had the person been employed under the provisions of public employees' retirement system Plan 1 or Plan 2 for the same period of employment.

(g) The person is an elected official as defined under WAC 182-12-115(6) who has voluntarily or involuntarily left a public office, whether or not the person receives a benefit from a state retirement system)) employee and enrolled dependents who are entitled to Medicare must enroll and maintain enrollment in both Medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to Medicare after enrollment in PEBB retiree insurance, they must enroll and maintain enrollment in Medicare.

(2) Eligibility requirements. Eligible employees ((who participate in PEBB sponsored life insurance as an active employee and meet qualifications for retiree insurance coverage as provided in subsection (1) of this section are eligible for PEBB sponsored retiree life insurance if they submit an election form no later than sixty days after the date their PEBB employee life insurance terminates, providing their employee life insurance premium is not being waived by the life insurance carrier at the time they elect retiree life insurance)) (as defined in WAC 182-12-115) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree the employee must be eligible to retire under a Washington state-sponsored retirement plan when their employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the health care authority's appeals committee to determine eligibility (see WAC 182-16-030). Employees must meet other retiree insurance election procedural requirements.

• Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below.

• Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

• Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011 (13)), are eligible if they meet their retirement plan's age

requirement and length of service when PEBB employee insurance coverage ends. They do not have to receive a retirement plan payment.

- Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's age requirement, or are at least age fifty-five with ten years of state service.

- Employees who are permanently and totally disabled are eligible if they start receiving or defer a monthly disability retirement plan payment.

- Employees not retiring under the public employees' retirement system must meet the same age and years of service had the person been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

- Employees who retire from a local government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as a retiree.

(a) Local government employees. If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits. Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if department of retirement systems requires this because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service when employer paid or COBRA coverage ends.

Employees who separate from employment due to total and permanent disability who are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's open enrollment period for the year beginning January 1, 1995.

~~(3) ((The following retired and disabled school district and educational service district employees are eligible to participate in health plan coverage only, provided they meet all of the enrollment criteria stated below and, if they are entitled to Medicare, are also enrolled in both Medicare Parts A and B:~~

~~(a) Persons receiving a retirement allowance under chapter 41.32, 41.35 or 41.40 RCW as of September 30, 1993, and who enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the authority for the plan year beginning January 1, 1995;~~

~~(b) Persons who separate from employment with a school district or educational service district due to a total and permanent disability and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35 or 41.40 RCW. Such persons must enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the HCA for the plan year beginning January 1, 1995, or sixty days following retirement, whichever is later.))~~

Elected state officials. Employees who are elected state officials (as defined under WAC 182-12-115(6)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They do not have to receive a retirement plan payment from a state-sponsored retirement system.

~~(4) ((With the exception of the Washington state patrol, retirees and disabled employees are not eligible for an employer premium contribution.))~~ **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and fire fighters' retirement system;

- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teacher's retirement system; and
- State patrol retirement system.

~~((5))~~ The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, ((shall be)) are considered a Washington state-sponsored retirement system for Washington State University Extension employees ((who are)) covered under the PEBB insurance coverage at the time of retirement or disability.

~~((6) Employees who do not elect enrollment in PEBB retiree insurance coverage no later than sixty days immediately after termination of employment for retirement, or immediately after continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends, or who terminate PEBB retiree coverage no later than sixty days after retirement, or who terminate PEBB retiree coverage after retirement, are not eligible to reenroll in PEBB retiree insurance coverage unless they retired and deferred PEBB retiree coverage pursuant to WAC 182-12-205 or retired and deferred PEBB retiree coverage pursuant to WAC 182-12-200.~~

~~(7)(a) If a retiree's insurance coverage terminates for any reason, coverage will not be reinstated at a later date. Exam-~~

ples of termination include, but are not limited to, any one or more of the following:

- (i) Failure to continue to meet eligibility requirements;
- (ii) Fraud, intentional misrepresentation or withholding of information the enrollee knew or should have known was material or necessary to accurately determine eligibility or the correct premium;
- (iii) Failure to provide information requested by the due date or knowingly providing false information;
- (iv) Abusive or offensive conduct repeatedly directed to an HCA employee, a health plan or other HCA contractor providing coverage on behalf of the PEBB program, its employees, or other persons; or
- (v) Intentional misconduct.

(b) If a retiree fails to pay the premium when due or an underpayment of premium is made, PEBB sponsored insurance coverage will terminate on the last day of the month for which the last full premium was received.

(c) Notwithstanding (a) of this subsection, the PEBB assistant administrator or designee may approve reinstatement of insurance coverage if the retiree or their dependent or beneficiary submits a written appeal and provides proof that extraordinary circumstances made it virtually impossible to make the payment and the retiree agrees to make payment in accordance with the terms of an agreement with the HCA. No insurance coverage will be reinstated more than three times.

(8) Enrollees may not enroll in retiree dental coverage unless they also enroll in retiree medical coverage.

(9) In order to continue retiree term life insurance, an election must be made within sixty days after retirement and premiums must be paid whether or not the retiree is otherwise employed. Election of retiree term life insurance may not be waived or deferred during periods of other coverage or otherwise.)

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-175 May a local government entity applying for participation in PEBB insurance coverage include their retirees in the transfer unit? Local government entities applying for participation in PEBB insurance coverage under WAC 182-12-111(4), may request inclusion of retired employees who are covered under their retiree health plan at the time of application. The PEBB benefits services program will use the following criteria for approval of these requests for inclusion of retirees.

(1) The local government retiree health plan must have existed ~~((for a minimum of))~~ at least three years ~~((prior to))~~ before the date of application for participation in PEBB health plans.

(2) Eligibility for coverage under the local government's retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of employee coverage.

(3) The retiree must have maintained continuous enrollment in their local government retiree health plan.

(4) To protect the integrity of the risk pool, if total local government retiree enrollment exceeds ten percent of the

total PEBB retiree population, the PEBB benefits services program may:

(a) Stop approving inclusion of retirees with local government unit transfers; or

(b) May adopt a new rating methodology reflective of the cost of covering local government retirees.

(5) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12 and 182-16 WAC.

(6) Employees eligible for retirement subsequent to the local government transferring to PEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-200 May a retiree who is enrolled as a dependent in a PEBB ((sponsored)) health plan or a Washington state K-12 school district sponsored health plan ((coverage)) defer enrollment in a PEBB retiree health plan((s))? ~~((A retiree, whose spouse is enrolled as an eligible employee in a PEBB or Washington state school district sponsored health plan.))~~ Retirees who are enrolled in a PEBB or Washington state K-12 school district sponsored medical plan as a dependent may defer enrollment in a PEBB retiree health plan ((coverage and enroll in the spouse's PEBB or school district sponsored health plan coverage. If a retiree)). Retirees who defer((s)) enrollment in ((PEBB retiree)) medical ((coverage, enrollment must also be deferred for dental coverage)) cannot remain enrolled in dental. ~~((The retiree and eligible dependents))~~ Retirees who defer may ((subsequently)) later enroll themselves and their dependents in PEBB retiree medical ((coverage)), or medical and dental ((coverage)), if ((the retiree was continuously enrolled under the spouse's)) they provide evidence of continuous enrollment in a PEBB or K-12 school district sponsored ((health)) medical plan ((coverage)). Continuous enrollment must be from the date the retiree ((was initially eligible for)) deferred enrollment in retiree insurance ((coverage)). Retirees may enroll:

(1) During any PEBB open enrollment period ~~((determined by the HCA))~~ (Enrollment in the PEBB health plan will begin the first day of January after the open enrollment period.); or

(2) ~~((Within))~~ No later than sixty days after enrollment in the ((date the spouse ceases to be enrolled in a)) PEBB or K-12 school district sponsored ((health)) medical plan ((as an eligible employee; or

~~((3) Within sixty days of the date after the retiree's loss of eligibility as a dependent under the spouse's PEBB or school district sponsored health plan coverage.))~~ ends. (Enrollment in the PEBB health plan will begin the first day of the month after the PEBB or K-12 school district health plan ends.)

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-205 ((Retirees)) May a retiree defer enrollment in a PEBB health plan ((coverage)) at or after retirement((s))? Except as stated in subsection (1)(c) of this

section, if a retiree defers enrollment in a PEBB health plan ((~~coverage~~)), ((~~PEBB~~)) they also ((~~waives coverage~~)) defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other ((~~coverage~~)) life insurance.

(1) Retirees may defer enrollment in a PEBB health plan ((~~coverage~~)) at or after retirement if continuously enrolled in other comprehensive medical ((~~coverage~~)) as ((~~stated~~)) identified below:

(a) Beginning January 1, 2001, retirees may defer ((~~their PEBB health plan coverage~~)) enrollment if they are enrolled in comprehensive employer-sponsored medical ((~~coverage~~)) as an employee or the ((~~spouse or same-sex domestic partner~~)) dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer ((~~their PEBB health plan coverage~~)) enrollment if they are enrolled in medical ((~~coverage~~)) as a retiree or the ((~~spouse or same-sex domestic partner~~)) dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer ((~~their PEBB health plan coverage~~)) enrollment if they are enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB ((~~coverage~~)) health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a Medicaid program.

(2) To defer health plan ((~~coverage~~)) enrollment, the retiree must send a completed ((~~enrollment~~)) election form to the PEBB benefits services program requesting to defer ((~~coverage~~)). The PEBB benefits services program must receive the form before ((~~coverage~~)) health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree ((~~benefits~~)) insurance coverage.

(3) Retirees who defer ((~~PEBB coverage~~)) may enroll in a PEBB ((~~coverage~~)) health plan as follows:

(a) Retirees who defer ((~~PEBB health plan coverage~~)) while enrolled in employer-sponsored medical ((~~coverage~~)) may enroll in a PEBB health plan ((~~coverage~~)) by sending a completed ((~~enrollment~~)) election form and ((~~proof~~)) evidence of continuous enrollment in comprehensive employer-sponsored ((~~coverage~~)) medical to the PEBB benefits services program:

(i) During ((~~an annual~~)) open enrollment ((~~period~~)) ((~~Enrollment in the PEBB~~ ((~~coverage~~)) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their employer-sponsored ((~~coverage~~)) medical ends. ((~~Enrollment in the PEBB~~ ((~~coverage~~)) health plan will begin the first day of the month after the employer-sponsored ((~~coverage~~)) medical ends.)

(b) Retirees who defer ((~~PEBB health plan coverage~~)) enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to ((~~reenroll~~)) enroll in a PEBB health plan ((~~coverage~~)) by sending a completed ((~~enrollment~~)) election form and ((~~proof~~)) evidence of continuous enrollment in a federal retiree medical plan to the PEBB benefits services program:

(i) During ((~~an annual~~)) open enrollment ((~~period~~)) ((~~Enrollment in the PEBB~~ ((~~coverage~~)) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after the federal retiree ((~~coverage~~)) medical ends. ((~~Enrollment in the PEBB~~ ((~~coverage~~)) health plan will begin the first day of the month after the federal retiree ((~~coverage~~)) medical ends.)

(c) Retirees who defer ((~~PEBB health plan coverage~~)) enrollment while enrolled in Medicare Parts A and B and Medicaid may enroll in a PEBB health plan ((~~coverage~~)) by sending a completed ((~~enrollment~~)) election form and ((~~proof~~)) evidence of continuous enrollment in creditable coverage to the PEBB benefits services program:

(i) During ((~~the annual~~)) open enrollment ((~~period~~)) ((~~Enrollment in the PEBB~~ ((~~coverage~~)) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their Medicaid coverage ends ((~~Enrollment in the PEBB~~ ((~~coverage~~)) health plan will begin the first day of the month after the Medicaid coverage ends.); or

(iii) No later than the end of the calendar year ((~~during which~~)) when their Medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a Medicare Part D plan. ((~~Enrollment in the PEBB~~ ((~~coverage~~)) health plan will begin the first day of January following the end of the calendar year ((~~during which~~)) when the Medicaid coverage ends.)

NEW SECTION

WAC 182-12-207 When can a retiree or eligible dependent's insurance coverage be canceled by HCA? (1) Failure to provide information requested by the due date or knowingly providing false information.

(2) Failure to pay the premium when due or an underpayment of premium.

(3) If a retiree's insurance coverage is canceled for misconduct, insurance coverage will not be reinstated at a later date. Examples of such termination include, but are not limited to the following:

(a) Fraud, intentional misrepresentation or withholding of information the subscriber knew or should have known was material or necessary to accurately determine eligibility or the correct premium;

(b) Abusive or threatening conduct repeatedly directed to an HCA employee, a health plan or other HCA contracted vendor providing insurance coverage on behalf of the HCA, its employees, or other persons.

NEW SECTION

WAC 182-12-208 May a retiree enroll only in dental? If an enrollee is enrolled in retiree insurance coverage, they may not enroll in dental unless they also enroll in medical.

NEW SECTION

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in PEBB life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eli-

gible for PEBB retiree life insurance. They must submit an election form to the PEBB benefits services program no later than sixty days after the date their PEBB employee life insurance ends. However, employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends. Retirees may not defer enrollment in retiree term life insurance.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-211 If department of retirement systems makes a formal determination of retroactive eligibility, may the retiree enroll in PEBB (~~(sponsored)~~) retiree insurance coverage? (1) When the Washington state department of retirement systems (DRS) makes a formal determination that a person is retroactively eligible for pension benefits(~~(-)~~) that person may apply for enrollment in a PEBB (~~(retiree)~~) health plan (~~(coverage)~~) only if application is made within sixty days after the date of notice from DRS.

(2) All premiums due from the date of eligibility established by DRS or the date of the DRS decision letter, at the option of the retiree, must be sent with the application to (~~(HCA)~~) the PEBB benefits services program.

(3) The administrator may make an exception to the date PEBB retiree (~~(benefits)~~) insurance coverage commences or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending Order 06-08, filed 10/3/06, effective 11/3/06)

WAC 182-12-250 Insurance coverage eligibility for (~~(surviving dependents)~~) survivors of emergency service personnel killed in the line of duty. Surviving (~~(dependents)~~) spouses and dependent children of emergency service personnel who are killed in the line of duty are eligible (~~(for)~~) to enroll in health plans (~~(coverage)~~) administered by the PEBB benefits services program within HCA.

(1) This section applies to the (~~(dependents)~~) surviving spouse 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 fire fighters 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 fire fighters as defined in RCW 41.24.010.

(3) "Surviving (~~(dependent)~~) spouse and children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) (~~(Dependent)~~) Children. The term "children" includes the following unmarried children of the emergency service worker who are: Under the age of twenty or under the age of twenty-four if he or she is a dependent student attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing. (~~(Disabled dependents)~~) Children with disabilities as defined

in RCW 41.26.030(7) are eligible at any age. "Children" are defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren; and

(iii) Legally adopted children.

(4) Surviving (~~(dependents)~~) spouses and children who are entitled to Medicare must enroll in both parts A and B of Medicare.

(5) The (~~(surviving dependent)~~) survivor (or agent acting on their behalf) must send a completed (~~(enrollment)~~) election form (to either enroll or defer (~~(public employees' benefits board(-))~~) enrollment in a PEBB(~~(-coverage))~~) health plan) to PEBB benefits services (~~(department)~~) program no later than one hundred eighty days after the latter 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 fire fighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving (~~(dependent)~~) spouse or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving (~~(dependent)~~) spouse or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors (~~(that)~~) who do not choose to defer enrollment in a PEBB (~~(coverage)~~) health plan may choose among the following options for when their enrollment in a PEBB (~~(coverage)~~) health plan will begin:

(a) June 1, 2006, for survivors whose (~~(enrollment)~~) election form is received by the PEBB benefits services program no later than September 1, 2006;

(b) The first of the month that is no more than sixty days before the date that the PEBB benefits services program receives the (~~(enrollment)~~) election form (for example, if the PEBB benefits services program receives the (~~(enrollment)~~) election form on August 29, the survivor may request (~~(coverage)~~) health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB benefits services program receives the (~~(enrollment)~~) election form.

For surviving (~~(dependents)~~) spouses and children who enroll, monthly health plan premiums (~~(for PEBB health plan coverage)~~) must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) (~~(Surviving dependents)~~) Survivors must choose one of the following two options to maintain eligibility for PEBB (~~(health plan)~~) insurance coverage:

(a) Enroll in a PEBB health plan (~~(coverage)~~):

(i) Enroll in medical (~~(coverage)~~); or

(ii) Enroll in medical and dental (~~(coverage)~~).

(iii) (~~(The dependent)~~) Survivors enrolling in dental must stay enrolled in dental (~~(coverage)~~) for at least two years before dental (~~(coverage)~~) can be dropped.

(iv) Dental only (~~(coverage)~~) is not an option.

(b) Defer enrollment:

(i) (~~(Surviving dependents)~~) Survivors may defer enrollment in a PEBB health plan (~~(coverage)~~) if (~~(they are)~~)

enrolled in comprehensive medical coverage through an employer.

(ii) ~~((Surviving dependents))~~ Survivors may enroll in a PEBB health plan ~~((coverage))~~ when they lose employer medical coverage. ~~((Dependents))~~ Survivors will need to ~~((prove))~~ provide evidence that they were continuously enrolled in comprehensive coverage through an employer when applying for a PEBB ~~((coverage))~~ health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan ~~((coverage))~~ enrollment and premiums will begin the first day of the month following the day that the other coverage ended for ~~((dependents that reenroll))~~ eligible spouses and children who enroll.

(8) ~~((Surviving dependents))~~ Survivors may change their health plan during open enrollment. In addition to open enrollment, ~~((they))~~ survivors may change health plans ~~((if they move out of their health plan's service area or into a service area where a health plan that was not previously offered is now available))~~ as described in WAC 182-08-198.

(9) ~~((Surviving dependents))~~ Survivors may not add new dependents acquired through birth, marriage, or establishment of a qualified ~~((same-sex))~~ domestic partnership.

(10) ~~((Surviving dependents))~~ Survivors will lose their right to enroll in a PEBB health plan ~~((coverage))~~ if they:

(a) Do not apply to enroll or defer PEBB health plan ~~((coverage))~~ enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive medical coverage through an employer during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-260 Who are eligible dependents ~~((defined))~~? The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse.

(2) ~~((A same-sex))~~ Domestic partner qualified ~~((through))~~ by the PEBB declaration ~~((certificate issued by PEBB))~~ of domestic partnership that meets all of the following criteria:

(a) Partners have a close personal relationship in lieu of a lawful marriage;

(b) Partners are not married to anyone;

(c) Partners are each other's sole domestic partner and are responsible for each other's common welfare;

(d) Partners are not related by blood as close as would bar marriage; and

(e) Partners are barred from a lawful marriage.

(3) Domestic partner qualified by the certificate of state registered domestic partnership or registration card issued by the Washington secretary of state for a same-sex partnership.

~~((3-Dependent))~~ (4) Children through age nineteen. ~~((The term "children" includes))~~ Children include:

(a) The subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support of a

child in anticipation of adoption of the child, children of the subscriber's qualified ~~((same-sex))~~ domestic partner, or children specified in a court order or divorce decree~~((:))~~;

(b) Married children who qualify as dependents of the subscriber under the Internal Revenue Code~~((, and))~~;

(c) ~~Extended dependents ~~((approved by PEBB are included. To qualify for PEBB approval, the subscriber must demonstrate))~~ in the legal custody ~~((for the child with))~~ or legal guardianship of the subscriber, their spouse, or qualified domestic partner. The legal responsibility is demonstrated by a valid court order~~((:))~~ and the child's~~((:))~~~~

~~((a) Must be living with the subscriber in a parent-child relationship; and~~

~~((b) Must not be a)~~ official residence with the custodian or guardian. This does not include foster ~~((child))~~ children for whom support payments are made to the subscriber through the state department of social and health services ~~((DSHS))~~ foster care program~~((:))~~;

~~((4-Dependent))~~ (d) Children age twenty through age twenty-three ~~((and))~~ who are attending high school or registered students at an accredited secondary school, college, university, vocational school, or school of nursing.

~~((a-Dependent))~~ (i) Student ~~((coverage))~~ health plan enrollment begins the first day of the month ~~((in which))~~ of the quarter~~((:))~~ or semester for which the ~~((dependent))~~ child is registered begins ~~((and))~~. Health plan enrollment ends the last day of the month in which the ~~((dependent))~~ student stops attending or in which the quarter~~((:))~~ or semester ends, whichever is first, except that dependent student eligibility continues year-round for those who attend three of the four school quarters or two semesters.

~~((b-Dependent))~~ (ii) Student ~~((coverage))~~ eligibility for enrollment in a PEBB health plan continues during the three month period following graduation provided the subscriber is covered, ~~((at the same time;))~~ the ~~((dependent))~~ child has not reached age twenty-four, and ~~((the dependent))~~ meets all other eligibility requirements.

(iii) Student recertification occurs annually.

(e) Children as defined in (a) through (d) of this subsection who have disabilities are eligible by subsection (5) of this section.

(5) ~~((Dependent))~~ Children of any age with disabilities, developmental disabilities, mental illness or mental retardation who are incapable of self-support, provided such condition occurs ~~((prior to))~~ before age twenty or during the time the dependent was eligible as a student under subsection (4) of this section.

(a) The subscriber must provide ~~((proof))~~ evidence that such disability occurred ~~((prior to))~~ as stated below:

(i) For children enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability within sixty days of the ~~((dependent's))~~ child's attainment of age twenty ~~((or during the time))~~.

(ii) For children enrolled in PEBB insurance coverage as a student under subsection (4)(d) of this section, the subscriber must provide evidence of the disability within sixty days after the student is no longer eligible under subsection (4)(d) of this section.

(iii) To enroll a dependent child with disabilities, age twenty or older, the subscriber must provide evidence that the

condition occurred before the child reached age twenty or evidence that when the condition occurred the ((dependent satisfies)) child would have satisfied eligibility for student coverage under subsection (4) of this section((, and as)). The PEBB benefits services program will request evidence of the child's disability periodically ((requested)) thereafter ((by the PEBB program)).

((~~(a)~~)) (b) The subscriber must notify the PEBB benefits services program, in writing, no later than sixty days after the date that a ((dependent)) child age twenty or older no longer qualifies under this subsection.

(i) For example, children who become self-supporting are not eligible under this rule as of the last day of the month in which they become capable of self-support. The ((~~dependent~~)) child may be eligible to continue enrollment in a PEBB ((coverage)) health plan under provisions of WAC 182-12-270.

(ii) Children age twenty and older ((~~that~~)) who become capable of self-support do not regain eligibility under subsection (5) of this section if they later become incapable of self-support.

(c) Disability recertification occurs periodically.

(6) ((~~Dependent~~)) Parents.

(a) ((~~Dependent~~)) Parents covered under ((a)) PEBB medical ((~~plan~~)) before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous ((coverage)) enrollment in PEBB ((~~sponsored~~)) medical ((coverage));

(ii) The parent qualifies under the Internal Revenue Code as a dependent of ((~~an eligible~~)) the subscriber;

(iii) The subscriber ((~~who claimed the parent as a dependent~~)) continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical ((coverage)).

(b) ((~~Dependent~~)) Parents ((~~that are~~)) eligible under ((~~(a) or~~)) this subsection may be enrolled with a different health ((~~carrier~~)) plan than that selected by the ((~~eligible~~)) subscriber((; however, dependent)). Parents may not add additional dependents to their insurance coverage.

(7) The enrollee (or the subscriber on their behalf) must notify the PEBB benefits services program, in writing, no later than sixty days after the date ((~~that a dependent~~)) they are no longer ((~~qualifies~~)) eligible under ((~~subsection (1), (2), (3), (4) or (6) of~~)) this section. ((~~The subscriber must notify the PEBB program in writing no later than sixty days after the date a dependent no longer qualifies under subsection (5) of this section.~~)) A PEBB continuation of coverage election notice and continued health plan enrollment will only be available if the PEBB benefits services program is notified in writing within the sixty-day period.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-265 What options for continuing health plan ((coverage)) enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in sub-

section (1), (2), or (3) of this section is eligible to enroll in public employees((²)) benefits board (PEBB) retiree insurance coverage as a surviving dependent. An eligible surviving ((dependent)) spouse, qualified domestic partner, or child must enroll in or defer enrollment in a PEBB health plan ((coverage)) no later than sixty days after the date of the employee((²)) or retiree's death.

(1) Dependents ((~~that~~)) who lose eligibility due to the death of an eligible employee may continue enrollment in a PEBB health plan ((coverage)) as a survivor under ((a)) retiree ((~~plan~~)) insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or qualified ((~~same sex~~)) domestic partner may continue ((coverage)) health plan enrollment until death.

(b) ((~~Other dependents~~)) Children may continue ((coverage)) health plan enrollment until they lose eligibility under PEBB rules.

(c) If a surviving ((dependent)) spouse, qualified domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems) the dependent is not eligible ((~~to participate in~~)) for PEBB retiree ((coverage)) insurance as a survivor. However, the dependent may continue health plan ((coverage)) enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents ((~~that~~)) who lose eligibility due to the death of a PEBB eligible retiree may continue health plan ((coverage)) enrollment under ((a)) retiree ((~~plan~~)) insurance.

(a) The retiree's spouse or qualified ((~~same sex~~)) domestic partner may continue ((coverage)) health plan enrollment until death.

(b) ((~~Other dependents~~)) Children may continue ((coverage)) health plan enrollment until they lose eligibility under PEBB rules.

(c) Dependents ((~~that~~)) who are waiving enrollment in a PEBB health plan ((coverage)) at the time of the retiree's death are eligible to enroll or defer enrollment in PEBB retiree ((coverage)) insurance. A form to enroll or defer PEBB health plan ((coverage)) enrollment must be hand-delivered or mailed to the PEBB benefits services program no later than sixty days after the retiree's death. To enroll in a PEBB health plan ((coverage)), the dependent must provide satisfactory evidence ((~~that~~)) of continuous enrollment in other ((~~health plan~~)) medical coverage ((~~was continuous~~)) from the most recent open enrollment ((~~period~~)) for which enrollment in PEBB ((coverage)) was waived.

(3) Surviving spouses or eligible ((dependent)) children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance cover-

age at the time of the subscriber's death may enroll in a PEBB (~~(sponsored)~~) health plan (~~(coverage)~~) provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or qualified (~~(same-sex)~~) domestic partner may continue health plan (~~(coverage)~~) enrollment until death.

(b) (~~(Other dependents)~~) Children may continue (~~(coverage)~~) health plan enrollment until they lose eligibility under PEBB rules.

(4) Surviving dependents must notify the PEBB benefits services program of their decision to enroll or defer enrollment in a PEBB health plan (~~(coverage)~~) no later than sixty days after the date of death of the employee or retiree. If PEBB (~~(coverage)~~) health plan enrollment ended due to the death of the employee or retiree, PEBB will reinstate health plan (~~(coverage)~~) enrollment without a gap subject to payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan (~~(coverage)~~) under WAC 182-12-200 and 182-12-205. To notify the PEBB benefits services program of their intent to enroll or defer enrollment in a PEBB health plan (~~(coverage)~~) the surviving dependent must send a completed (~~(enrollment)~~) election form to the PEBB benefits services program no later than sixty days after the date of death of the employee or retiree.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-270 What options are available to dependents (~~(that)~~) who cease to meet the (~~(definition of dependent)~~) eligibility criteria in WAC 182-12-260? If eligible, dependents may continue health plan enrollment (~~(# PEBB health plan coverage)~~) under one of the continuation options in subsection (1), (2), or (3) of this section by self-paying premiums following their loss of eligibility. The PEBB benefits services program must receive a timely election form as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing (~~(coverage)~~) health plan enrollment are based on the reason that eligibility was lost.

(1) (~~(Dependents that)~~) Spouses, qualified domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue (~~(coverage)~~) health plan enrollment under provisions of WAC 182-12-250 or 182-12-265.

(2) Dependents of a lawful marriage (~~(that)~~) who lose eligibility because they no longer meet the (~~(definition of dependent as defined)~~) eligibility criteria in WAC 182-12-260 are eligible to continue (~~(coverage)~~) health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA); or

(3) Dependents of a qualified (~~(same-sex)~~) domestic partnership (~~(that)~~) who lose eligibility because they no longer meet the (~~(definition of dependent as defined)~~) eligibility criteria in WAC 182-12-260 may continue health plan enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No extension of PEBB coverage will be offered unless the PEBB benefits services program is notified through hand-delivery or United States Postal Service mail of a completed notice of qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-12-190

May a retiree change health carriers at retirement?

AMENDATORY SECTION (Amending WSR 91-14-025, filed 6/25/91, effective 7/26/91)

WAC 182-16-020 Definitions. As used in this chapter the term:

(~~(H)~~) "Administrator" (~~(shall)~~) means the administrator of the health care authority (HCA) or designee;

(~~(A)~~) "Agency" (~~(shall)~~) means the health care authority;

(~~(3)~~) "Agent" (~~(shall)~~) means a person, association, or corporation acting on behalf of the health care authority pursuant to a contract between the health care authority and the person, association, or corporation.

"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.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB" means the public employees benefits board.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and others as defined in RCW 41.05.011.

AMENDATORY SECTION (Amending WSR 97-21-128, filed 10/21/97, effective 11/21/97)

WAC 182-16-030 Appeals (~~(from)~~) of decisions of the agency (~~(decisions)~~) or its agent—Applicability. (~~(Any enrollee of the health care authority's administered insurance plans (the self-insured plans) aggrieved by a decision of the agency or its agent concerning any matter related to scope of coverage, denials of claims, determinations of eligibility, or cancellations or nonrenewals of coverage may obtain administrative review of such decision by filing a notice of appeal with the health care authority's appeals committee. Review of decisions made by HMOs or similar health care contractors will be pursuant to the grievance/arbitration provisions of~~))

those plans and are not subject to these rules. Except that decisions concerning eligibility determinations are reviewable only by the health care authority.) Except as provided by RCW 48.43.530 and 48.43.535, any person aggrieved by a decision of the health care authority or its agent may appeal that decision.

(1) **Eligibility appeals.** Decisions concerning eligibility determinations are reviewable by the health care authority. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.

(2) **Noneligibility appeals.** Appeals of decisions made by the agency's self-insured medical plans, managed health care plans, and other agency contractors are governed by the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility determinations.

(3) **Dental plan appeals.** Any enrollee of the health care authority's self-administered dental plan aggrieved by a decision of the agency or its agent may appeal to the PEBB appeals manager. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.

(4) **Retirement plan age appeals.** Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may appeal the denial of their retiree insurance eligibility. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice. Employees must meet other retiree insurance election procedural requirements. Eligibility denials caused by these circumstances may be reversed:

(a) Misleading or incorrect written information provided by employees of the health care authority or employers;

(b) Loss of COBRA coverage due to Medicare eligibility;

(c) Other related miscalculations of the duration of COBRA coverage; or

(d) Administrative errors or delays attributable to the state that have material impact on eligibility.

(5) **Limited retiree insurance coverage reinstatement.** Reinstatement of a retiree's insurance coverage may be approved when coverage was terminated because of late payment or late paperwork, or in extraordinary circumstances such as the retiree's impaired decision-making which adversely affects eligibility. No retiree's insurance coverage may be reinstated more than three times. Reinstatement may be approved only if:

(a) The retiree or a representative acting on their behalf submits a written appeal within sixty days after the notice of termination was mailed; and

(b) The retiree agrees to make payment in accordance with the terms of an agreement with the HCA.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-16-040 Appeals—Notice of appeal contents. Except as provided by RCW 48.43.530 and 48.43.535 and WAC 182-16-030(2), any person aggrieved by a decision of the health care authority(~~'s PEBB program~~) or its agent

may appeal that decision by filing a notice of appeal with the PEBB (~~(program's)~~) appeals manager. The notice of appeal must contain:

(1) The name and mailing address of the enrollee;

(2) The name and mailing address of the appealing party;

(3) The name and mailing address of the appealing party's representative, if any;

(4) A statement identifying the specific portion of the decision being appealed making it clear what (~~it is that~~) is believed to be unlawful or unjust;

(5) A clear and concise statement of facts in support of appealing party's position;

(6) Any (~~and all~~) information or documentation that the (~~aggrieved person~~) appealing party would like considered and (~~feels~~) substantiates why the decision should be reversed (~~(f)~~). Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision(~~(h)~~);

(7) A copy of the (~~PEBB program's~~) health care authority's or (~~health carrier's~~) its agent's response to the issue the (~~appellant~~) appealing party has raised;

(8) The type of relief sought;

(9) A statement that the appealing party has read the notice of appeal and believes the contents to be true(~~(f) followed by his or her~~);

(10) The appealing party's signature and the signature of his or her representative, if any;

(~~(10)~~) (11) The appealing party shall file the original notice of appeal with the PEBB benefits services program using hand delivery, electronic mail or United States Postal Service mail. The notice of appeal must be received by the PEBB benefits services program within (~~(sixty)~~) ninety days after the decision of the PEBB staff was mailed to the appealing party. The PEBB appeals manager shall acknowledge receipt of the copies filed with the PEBB benefits services program;

(~~(11)~~) (12) The health care authority's appeals (~~(officer)~~) committee will render a written decision within thirty working days after receipt of the complete notice of appeal.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-16-050 Appeals—Hearings. (1) If the appealing party is not satisfied with the decision of the health care authority's appeals (~~(officer upholds the original denial)~~) committee, the (~~enrollee~~) appealing party may request an administrative hearing. The request must be made in writing to the PEBB (~~(program's)~~) appeals manager. The appeal is not effective unless the PEBB (~~(benefit services must)~~) appeals manager receives the written request for a hearing within (~~(fifteen)~~) thirty days of the date the appeals decision was mailed to the (~~appellant~~) appealing party.

(2) The agency shall set the time and place of the hearing and give not less than (~~(seven)~~) twenty days notice to all parties and persons who have filed written petitions to intervene.

(3) The administrator or his or her designee shall preside at all hearings resulting from the filings of appeals under this chapter.

(4) All hearings (~~shall~~) must be conducted in compliance with these rules, chapter 34.05 RCW and chapter 10-08 WAC as applicable.

(5) Within ninety days (~~of~~) after the hearing record is closed, the administrator or his or her designee shall render a decision which shall be the final decision of the agency. A copy of that decision accompanied by a written statement of the reasons for the decision shall be served on all parties and persons who have intervened.