WSR 13-17-016
PROPOSED RULES

BOARD FOR VOLUNTEER FIREFIGHTERS AND RESERVE OFFICERS

[Filed August 8, 2013, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-21-075.

Title of Rule and Other Identifying Information: Chapter 491-04 WAC, Filing appeals.

Hearing Location(s): Thurston Co. FPD #8, 3506 Shincke Road N.E., Olympia, WA 98506, on October 10, 2013, at 6:00 p.m.

Date of Intended Adoption: October 10, 2013.

Submit Written Comments to: Brigette K. Smith, P.O. Box 114, Olympia, WA 98507, or in person at 605 11th Avenue S.E., Suite #112, Olympia, WA 98501, e-mail brigettes @bvff.wa.gov, fax (360) 586-1987, by September 27, 2013.

Assistance for Persons with Disabilities: Contact Brigette K. Smith by September 27, 2013, TTY (360) 753-7318 or (877) 753-7318.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is necessary to lay out a procedure for filing an appeal of a local board or staff decision denying benefits to a participant. The board for volunteer firefighters and reserve officers (BVFF) currently has no rules for filing an appeal.

Reasons Supporting Proposal: Most other agencies have WACs outlining the procedure for filing an appeal of a decision. Because the BVFF does not have one, it is confusing for staff, constituents, and stakeholders to know what to do when an appeal is requested. This results in inconsistencies between appeals and increases the cost of hearing because of the time involved in explaining a process that is not documented anywhere.

Statutory Authority for Adoption: RCW 41.24.290(2).

Statute Being Implemented: Chapter 491-04 WAC.

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

Name of Proponent: BVFF, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Brigette K. Smith, 605 11th Avenue, Suite #112, Olympia, WA 98501, (360) 753-7318; and Enforcement: BVFF, 605 11th Avenue, Suite #112, Olympia, WA 98501, (360) 753-7318.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule will not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The board's proposed WAC is not a significant rule of the specified governmental departments nor is it a rule that adopts, by incorporation or reference, federal or state statutes or rules from other state agencies. It is a rule that relates to only internal governmental operations that are not subject to violation by a nongovernmental party, thus negating the requirement.

August 8, 2013
Brigette K. Smith
Executive Secretary

Chapter 491-04 WAC

FILING APPEALS

NEW SECTION

WAC 491-04-010 Purpose. This chapter sets forth the steps that are necessary to file an appeal of a local board or state board staff decision.

NEW SECTION

WAC 491-04-020 Who is allowed to file a request for an appeal of a decision? You are allowed to file a request for an appeal if you are;

(1) The benefit recipient directly affected by the decision; or

(2) Legal counsel for the benefit recipient directly affected by the decision.

[NEW SECTION]

WAC 491-04-030 What is the time limitation for filing a request for an appeal? All requests must be filed with the state board within ninety (90) calendar days of the decision mailing date.

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

[NEW SECTION]

WAC 491-04-040 Am I required to have a legal counsel? An attorney may represent you, but one is not required. The appeals process can be complicated and is conducted more like a court trial, so this should be considered when deciding to represent yourself.

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

[NEW SECTION]

WAC 491-04-050 Where are requests for an appeal filed? All requests must be made in writing with the state board at its office in Olympia, Washington.

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

[NEW SECTION]

WAC 491-04-060 What methods of filing are acceptable? Unless otherwise provided by statute or these rules, any written communication may be filed with the board personally, by mail, by facsimile, or by email before or on the date such filing is due. Any notices of appeal that fail to comply with the board's filing requirements may be rejected by the board. The board must notify the filing party of the rejection.

(1) Filing personally. To file written communication personally, the documents must be delivered to an employee of the board at the board's office in Olympia, Washington during regular office hours.

(2) Filing by mail. To file written communication by mail, the documentation must be deposited in the United States Mail, properly addressed to the board's offices in Olympia, Washington, and with all postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(3) Filing by telephone facsimile.

a. Filing written communication by facsimile is acceptable when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications must be filed with the board at its offices in Olympia, Washington.

b. The hours of operation of the board's telephone facsimile equipment are the same as the regular office hours. If a transmission of a written communication commences after these hours of operation, the written communication shall be deemed filed on the next business day.

c. Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in such transmission.

d. No written communication sent to the board via facsimile shall exceed fifteen pages in length, exclusive of the cover page required by this rule.

e. The party attempting to file written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

f. The original of any papers filed by facsimile must also be mailed to the board within twenty-four (24) hours of the time the fax was sent.

(4) Electronic filing. A request for an appeal may be filed electronically. An electronic request is filed when it is received by the executive secretary during the board's regular office hours. Otherwise, the request is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received.

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

[NEW SECTION]

WAC 491-04-070 What should my request for an appeal include? Your appeal must include:

(1) In the case of illness or injury claims, the date and nature of the claim, and the place it occurred;

(2) A statement of what you want the board to do (relief requested) after considering the appeal;

(3) An explanation of why your request has merit;

(4) All facts relating to the request;

(5) The name and address of your attorney, if applicable; and

(6) Your name, address, phone number, facsimile number (if applicable), e-mail address, and signature.

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

[NEW SECTION]

WAC 491-04-080 How much information should I provide in my request for an appeal? You bear the burden of convincing the board that you are entitled to the relief requested. You must provide sufficient information to outweigh the information that the staff or local board used in making the decision that is being reviewed.

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

[NEW SECTION]

WAC 491-04-090 Who pays for the cost of obtaining additional medical data if my case relates to an injury or illness? If your appeal regards an injury or illness and you need to provide additional medical data to support your request, you must pay any cost involved and it will not be reimbursable by the agency.

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

[NEW SECTION]

WAC 491-04-100 What will the agency do after receiving my request for an appeal? (1) Within thirty (30) days from the date that your request is received by the board, staff will review the request and determine if your request is accepted or rejected. If rejected, the staff must notify you of the rejection and why it was rejected.

(2) The executive secretary, or his or her designee, will have thirty (30) days from the date of receipt to review the request and request additional documentation and/or medical exams to help resolve the dispute prior to an administrative hearing.

a. If the staff requests additional medical exams, the agency shall pay for the cost of the examinations and any mileage to and from such examination appointments.

b. If the executive secretary, or his or her designee, is able to resolve the dispute, the request for an appeal will be closed.

c. If the executive secretary, or his or her designee, is unable to resolve the dispute, a notice of hearing will be issued.

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

[NEW SECTION]

WAC 491-04-110 What are the requirements for a notice of hearing? (1) All parties shall be served with a notice of hearing not less than thirty (30) days before the date set for the hearing.

(2) The notice shall include the date of the hearing, the time of the hearing, and the place the hearing will be held.

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

[NEW SECTION]

WAC 491-04-120 Can cases be consolidated? If there are multiple adjudicative proceedings involving common issues or parties, upon motion of any party or upon his or her own motion, these cases can be combined at the discretion of the Board Chair.

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

[NEW SECTION]

WAC 491-04-130 What methods of serving papers is acceptable? (1) All notices, pleadings, and other papers filed with the board shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by e-mail; by first-class, registered, or certified mail; by facsimile and same-day mailing of copies; or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by facsimile shall be regarded as completed upon production by the facsimile machine upon confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

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

[NEW SECTION]

WAC 491-04-140 What is adequate proof of service? Where proof of service is required by statute or rule, filing the papers with the board, together with one of the following, shall constitute proof of service:

(1) an acknowledgement of service

(2) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(3) A certificate that the person signing the certificate served the papers upon all parties of the proceeding by:

a. Mailing a copy thereof, properly addressed with the postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

b. Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

c. Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

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

[NEW SECTION]

WAC 491-04-150 Can I bring someone with me to the hearing? You can bring an attorney to represent you, or a family member, friend, or anyone else to help you, provided however, that in all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the board or the secretary thereof determines that representation in such hearing requires a high degree of legal training, experience, and skill, the board or the secretary thereof may limit those who may appear in a representative capacity to attorneys-at-law.

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

[NEW SECTION]

WAC 491-04-160 Can witnesses be subpoenaed? The board may compel the taking of testimony from witnesses under oath before the state board, or the secretary thereof, or the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time.

(1) The board shall have the same power of subpoena as prescribed in RCW 51.52.100.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the board and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(3) A subpoena may be served by any suitable person over eighteen (18) years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(4) The board chair may, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may

a. Quash or modify the subpoena if it is unreasonable and oppressive, or

b. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Failure of any claimant to appear and give any testimony shall suspend any rights or eligibility to receive payments for the period of such failure to appear and testify.

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

[NEW SECTION]

WAC 491-04-170 Can I submit medical reports instead of having to pay a doctor to testify? You must present the testimony of your witness. Witnesses may appear telephonically (see WAC 491-04-220). Reports or letters are considered hearsay. Hearsay statements are not usually admissible because the opposing party cannot cross-examine

the person making the statement to test the statement's accuracy.

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

[NEW SECTION]

WAC 491-04-180 Can new evidence be submitted for the hearing? The board must base its decision on the information in the agency file as it existed on the date of the agency decision. New medical or vocational information offered by either party cannot be considered. If the appealing party feels it has new evidence that may change a local board or staff decision, it should withdrawal its request for a hearing and ask the local board or staff to reconsider its decision with the new evidence.

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

[NEW SECTION]

WAC 491-04-190 What are the timing requirements for the filing of pre-hearing briefs and supporting evidence? You must file your pre-hearing brief, along with any evidence that you believe supports your position in accordance with the filing requirements set forth in WAC 491-04-060.

(1) A pre-hearing brief should be a summary of the points that you want to make regarding your case. Specific exhibits should be referenced to make it easier for the board to follow your case.

(2) Include all evidence you want the board to consider. This could include, but is not limited to, medical reports or accident reports for injury claims, or training records or response records for service credit claims. All evidence must meet the requirements in WAC 491-04-180.

(3) Your pre-hearing brief and all evidence must be filed to the board and all parties to the action, no less than fourteen (14) days prior to the scheduled hearing date.

(4) All parties may, upon review of all evidence, file a response to a party's pre-hearing brief to the board and all parties involved no later than seven (7) days prior to the scheduled hearing date.

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

[NEW SECTION]

WAC 491-04-200 How is evidence presented? All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452

(1) Documentary evidence not submitted in advance as required in WAC 491-04-190 shall not be allowed into evidence unless there is a clear showing that the offering part had good cause for his or her failure to produce the evidence sooner.

(2) Any objections to evidence must be filed in writing prior to the hearing or the evidence will be deemed as admitted, unless such evidence is properly first presented at hearing under subsection (1) hereof. The board chair may permit a party to object to evidence at a later time upon a clear showing of good cause for failure to have filed such written objection.

(3) When only portions of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the board shall appear, except with the permission of the board, as an expert witness on behalf of other parties in a proceeding in which he or she previously took an active part in the investigation as a representative of the board.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the board chair, be grounds for striking all testimony previously given by such witness on related matter.

(6) Any party bound by a stipulation or admission of record may, at any time prior to closure of the hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding office that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the right of other parties to the proceeding.

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

[NEW SECTION]

WAC 491-04-210 How does the board handle testimony under oath? (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the board chair may require the witness to agree to be bound by the laws of the state of Washington for the purposes of the oath.

(2) Phone numbers for any person testifying by phone must be provided to the executive secretary no less than five (5) days before a scheduled hearing or deposition.

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

[NEW SECTION]

WAC 491-04-220 Can witnesses appear by phone? The board chair may conduct all or part of the hearing by telephone, television, or other electronic means, if the rights of the parties will not be prejudiced and if each participant in the hearing has an opportunity to participate in, to hear, and, if technically and economically feasible, in the judgment of the board chair, to see the entire proceeding while it is taking place. However, the board chair shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time.

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

[NEW SECTION]

WAC 491-04-230 Will the hearing be recorded? All hearings shall be recorded through the use of a court reporter that will be retained and paid for by the state board in accordance with RCW 41.24.035.

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

[NEW SECTION]

WAC 491-04-240 What is the role of the state board in an appeal? (1) The board chair, or his or her designee, shall have the authority to:

a. Determine the order of presentation of evidence;

b. Administer oaths and affirmations;

c. Issue subpoenas pursuant to RCW 51.52.100;

d. Rule on procedural matters, objections, and motions;

e. Rule on motions for summary judgment;

f. Rule on offers of proof and receive relevant evidence;

g. Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing; and

h. Permit or require oral argument or briefs and determine the time limits for submission.

(2) All board members shall have the authority to:

a. Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and

b. Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties.

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

[NEW SECTION]

WAC 491-04-250 Do I have to file any paperwork after the hearing? After the hearing, all parties may file a post-hearing brief. A post-hearing brief restates your position, what you believe the board's decision should be, and what evidence presented supports that decision.

(1) Post-hearing briefs shall be served to the board and all involved parties no later than thirty (30) days after the hearing.

(2) If any party wants to prepare a response to the post-hearing briefs, he/she may serve such a response to the board and all involved parties within thirty days (30) of the post-hearing brief due date. Responses are not required.

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

[NEW SECTION]

WAC 491-04-260 After the hearing, how long will it be before a decision is made and issued? It takes a court reporter approximately four weeks to transcribe a deposition or hearing. It is the board's goal to issue decisions as soon as possible after all transcripts are received. This generally takes between sixty (60) and ninety (90) days. At times, due to the complexity of the appeal, it may take longer.

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

[NEW SECTION]

WAC 491-04-270 How am I informed of the final decision? Every decision and order, whether initial or final, shall be written, signed by all members present, be provided to all parties, and shall:

(1) Be correctly captioned as to the name of the agency and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Contain appropriate numbered findings of fact

(4) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(5) Contain an initial or final order disposing of all contested issues; and

(6) Contain a statement describing the available post-hearing remedies.

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

[NEW SECTION]

WAC 491-04-280 What happens once the decision is issued? (1) Petition for review and replies:

a. Any party to a hearing may file a petition for the board's reconsideration of its order.

b. The petition for reconsideration shall be filed with the agency's executive secretary within thirty (30) days of the date of service of the order unless a different place and time limit for filing the petition are specified in the order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

c. The petition for review shall specify the portions of the order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

d. Any party may file a reply to a petition for reconsideration. The reply shall be filed with the office where the petition for review was filed within thirty (30) days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

(2) A petition for reconsideration of an order shall be filed with the board.

(3) Official transcript:

a. Copies of official transcripts will not be made available by the board. A party may request a copy of the official transcript but shall bear the cost of such transcript.

b. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. If the parties agree and the board chair approves, transcript corrections may be incorporated into the record at any time

during the hearing or after the close of evidence. All corrections must be made within ten (10) calendar days after receipt of the transcript unless the board chair allows a different period.

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

[NEW SECTION]

WAC 491-04-290 Are the parties allowed to reach an settlement? Settlements may be worked out with the agreement of both parties. The following procedures are available for dispute resolution that may make more elaborate proceedings unnecessary:

(1) a. The state encourages all agencies and persons to explore early, resolution to disputes whenever possible. Any person whose interest in a matter before the board may be resolved by settlement shall communicate his or her request or complaint to the agency, setting forth all pertinent facts and particulars and the desired remedy. If the board or staff requires additional information to resolve the matter, it shall promptly provide to the person who is seeking relief an opportunity to supply such information. Settlement negotiations shall be without prejudice to rights of a participant in the negotiations. Provided, however, that any time limit applicable to filing a application for a hearing shall not be extended because settlement attempts are pending.

b. In the event an early resolution is reached, the agency is responsible for providing a written description of the resolution to the person(s) involved.

(2) a. If settlement of an adjudicative proceeding may be accomplished by negotiation with the agency or other parties involved, negotiations shall be commenced at the earliest possible stage of the proceeding.

Settlement shall be concluded by:

(i) Stipulation of parties;

(ii) Withdrawal by the applicant of his or her application for a hearing; or

(iii) Withdrawal of any local board, state board, or staff action which is the subject matter of the hearing.

b. A stipulation shall be in writing and signed by each party to the stipulation or his or her representative or shall be recited on the record at the hearing. When an adjudicative proceeding has been settled by stipulation, the agency head, the agency head's designee, or the board chair shall enter an order in conformity with the terms of the stipulation.

c. When a hearing has been wholly or partially settled by withdrawal, the board chair, or his or her designee, shall enter an order dismissing the hearing or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.

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

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 13-18-025
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 13-05—Filed August 27, 2013, 12:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-031.

Title of Rule and Other Identifying Information: The department of ecology proposes to adopt amendments to uses and limitations of the water pollution control revolving fund (revolving fund), chapter 173-98 WAC.

Hearing Location(s): Pierce County Library, Processing and Administration Center (PAC), Room A, 3005 112th Street East, Tacoma, WA 98446, on October 10, 2013, at 1:00 p.m.

Date of Intended Adoption: November 20, 2013.

Submit Written Comments to: Daniel Thompson, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail daniel.thompson@ecy.wa.gov, fax (360) 407-7151, by October 17, 2013.

Assistance for Persons with Disabilities: Visually impaired persons can call the water quality program at (360) 407-6502. Persons with hearing loss can call 711 for Washington relay service. Persons with a speech disability can call (877) 833-6341, by October 3, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend the existing rule to implement an administration charge authorized by state law and incorporate the definition of "debt service" from chapter 90.50A RCW. The proposed amendments will allow ecology to assess an administration charge on each revolving fund loan at the point the loan enters repayment status. The rule proposal is strictly limited to implementing the administration charge.

The administration charge:

- Will be applied to any revolving fund loan that enters repayment after the rule becomes effective.
- Cannot exceed one percent on the declining loan balance.
- May not be applied to loans with an interest rate below the administration change [charge].
- Will be subtracted from the established interest rate for the loan; thus, it will have no impact on borrowers.

Reasons Supporting Proposal: The revolving fund rule is well established. However, in order to meet the mandate from the United States Environmental Protection Agency (EPA) that the revolving fund be maintained "in perpetuity," ecology needs to amend the existing rule to implement an administration charge. The administration charge will be used strictly for program administration costs.

Statutory Authority for Adoption: Chapter 90.50A RCW, Water pollution control facilities—Federal capitalization grants.

Statute Being Implemented: Chapter 90.50A RCW, Water pollution control facilities—Federal capitalization grants.

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

Name of Proponent: Department of ecology, water quality program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Daniel Thompson, 300 Desmond Way S.E., Lacey, WA 980503 [98503]-1274, (360) 407-6510.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal is exempt from chapter 19.85 RCW because the revolving fund is not allowed to provide funding to small businesses, so there will be no impact on small businesses.

Section 1, chapter 210, Laws of 2012, does not apply because the department of ecology is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule, and the rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

August 23, 2013
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the Washington state department of ecology's (department) administration of Washington state's water pollution control revolving fund (revolving fund), and the water pollution control revolving administration account (administration account) as authorized by chapter 90.50A RCW, water pollution control facilities financing.

((~~This~~)) The revolving fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

The administration account is comprised of an administration charge applied to the outstanding loan balance on revolving fund loans. The administration account may be used for the following:

(1) Administration costs associated with conducting application processes, managing contracts, collecting loan repayments, managing the revolving fund, providing technical assistance, and meeting state and federal reporting requirements; and

(2) Information and data system costs associated with loan tracking and fund management.

At the point where the administration account adequately covers the program administration costs, the department may no longer use the federal administration allowance. If a federal capitalization grant is awarded after that point, all federal capitalization grant dollars must be used for making loans.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities,** see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices** (BMP) means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(8) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

(9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

(10) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(11) **Concentrated animal feeding operation** (CAFO) means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(15) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(16) **Debt service** means the total of all principal, interest, and administration charges associated with a water pollu-

tion control revolving fund loan that must be repaid to the department by the public body.

(17) **Department** means the Washington state department of ecology.

(((~~17~~))) (18) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(((~~18~~))) (19) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(((~~19~~))) (20) **Draft offer and applicant list** means a catalog of all applications for financial assistance considered and those proposed for funding, based on estimates of state and federal budgets.

(((~~20~~))) (21) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

(((~~21~~))) (22) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

(((~~22~~))) (23) **Eligible cost** means the portion of a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

(((~~23~~))) (24) **Energy efficiency** means the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and produce/use renewable energy.

(((~~24~~))) (25) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(((~~25~~))) (26) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC.

(((~~26~~))) (27) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(((~~27~~))) (28) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(((~~28~~))) (29) **Environmentally innovative** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way.

(((~~29~~))) (30) **Equivalent residential unit** (ERU) means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

(((~~30~~))) (31) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(((~~31~~))) (32) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application.

(((~~32~~))) (33) **Existing residential need** means that portion of a water pollution control facility's capacity reserved for residential structures that:

(a) Exist within the project service area at the time of application;

(b) Are connected to the facility or scheduled to be connected to the facility in an approved engineering report; and

(c) Will bear the financial burden of paying for the new facility.

(((~~33~~))) (34) **Facilities,** see water pollution control facility.

(((~~34~~))) (35) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC.

(((~~35~~))) (36) **Federal capitalization grant,** see capitalization grant.

(((~~36~~))) (37) **Final offer and applicant list** means a catalog of all applications for financial assistance considered and those offered funding, based on adopted state and federal budgets.

(((~~37~~))) (38) **Force account** means loan project work performed using labor, materials, or equipment of a public body.

(((~~38~~))) (39) **Forgivable principal** means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

(((~~39~~))) (40) **Funding category** see "water pollution control activities funding category," "water pollution control facilities funding category," "preconstruction funding category," and "green project reserves funding category."

(((~~40~~))) (41) **Funding cycle** means the events related to the competitive process used to allocate moneys from the revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source program for a state fiscal year.

(((~~41~~))) (42) **General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(((~~42~~))) (43) **Green infrastructure** means a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using storm water.

(((~~43~~))) (44) **Green project reserves** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

(((~~44~~))) (45) **Green project reserves funding category** means that portion of the revolving fund dedicated to green project reserves projects.

(((~~45~~))) (46) **Growth** means the portion of the total flows to a facility that is reserved for future residential, commercial, industrial, and institutional flows.

(((~~46~~))) (47) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(((~~47~~))) (48) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(((~~48~~))) (49) **Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

(((~~49~~))) (50) **Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur before final inspection or project completion.

(((~~50~~))) (51) **Intended use plan** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the revolving fund for a fiscal year as described in section 606(c) of the act.

(((~~51~~))) (52) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(((~~52~~))) (53) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(((~~53~~))) (54) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(((~~54~~))) (55) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

(((~~55~~))) (56) **Perpetuity** means the point at which the revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

(((~~56~~))) (57) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(((~~57~~))) (58) **Preconstruction** means facility planning, facility design, rate studies, value engineering, sewer use ordinances, and utility formation.

(((~~58~~))) (59) **Preconstruction funding category** means that portion of the revolving fund dedicated to preconstruction projects.

(((~~59~~))) (60) **Preliminary project priority list** means a catalog of all applications for financial assistance considered for funding and submitted to the Washington state legislature for its consideration during budget development.

(((~~60~~))) (61) **Project** means a water quality improvement effort funded with a grant or loan.

(((~~61~~))) (62) **Project completion** or **expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

(((~~62~~))) (63) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

(((~~63~~))) (64) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

(((~~64~~))) (65) **Recipient** means a public body that has an effective loan agreement with the department.

(((~~65~~))) (66) **Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the revolving fund loan.

(((~~66~~))) (67) **Residential** means the portion of the total flows to a facility that originates from single-family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

(((~~67~~))) (68) **Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

(((~~68~~))) (69) **Revolving fund** means Washington state's water pollution control revolving fund.

(((~~69~~))) (70) **Riparian buffer** or **zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

(((~~70~~))) (71) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

(((~~71~~))) (72) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

(((~~72~~))) (73) **Service area population** means the number of people served in the area of the project.

(((~~73~~))) (74) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

(((~~74~~))) (75) **Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

(((~~75~~))) (76) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(((~~76~~))) (77) **State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 C.F.R. § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

(((~~77~~))) (78) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

(((~~78~~))) (79) **Total project cost** means the sum of all expenses associated with a water quality project.

(((~~(79)~~))) (80) **Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

(((~~(80)~~))) (81) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(((~~(81)~~))) (82) **Water pollution control activities** or **activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(((~~(82)~~))) (83) **Water pollution control activities funding category** means that portion of the revolving fund dedicated to nonpoint source pollution projects.

(((~~(83)~~))) (84) **Water pollution control facility** or **facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

(((~~(84)~~))) (85) **Water pollution control facilities funding category** means that portion of the revolving fund dedicated to facilities projects.

(((~~(85)~~))) (86) **Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

(((~~(86)~~))) (87) **Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 and 173-98-310 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than five but no more than twenty years:	Sixty percent of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

(5) An administration charge will be applied to all loans that enter repayment after the effective date of this section. The following conditions apply to the administration charge.

(a) The administration charge will be applied to the outstanding loan balance at the time of each payment.

(b) The administration charge will be subtracted from the interest rate established in the loan agreement so there is no additional cost to the borrower.

(c) The administration charge will not be applied to loans with interest rates less than the administration charge.

(d) The maximum allowable administration charge is one percent. Initially the administration charge will be set at this level.

(e) Beginning with its 2017-2019 biennial operating budget submittal and each biennium thereafter, the department will compare the projected administration account balance and the projected administration charge income with projected program costs, including an adequate working capital reserve as defined by the office of financial management. In its submittal to the office of financial management, the department may:

(i) Find that the projected administration charge income is inadequate to fund the cost of administering the program, and that the rate of the charge must be increased; however, the administration charge may never exceed one percent;

(ii) Find that the projected administration charge income exceeds what is needed to fund the cost of administering the program, and that the rate of the charge must be decreased;

(iii) Find that there is an excess balance in the administration account, and that the excess must be transferred to the water pollution control revolving fund to be used for loans; or

(iv) Find that there is no need for any rate adjustments or balance transfers.

(f) If the department determines the administration charge should be adjusted, it will increase (up to the maximum of one percent) or decrease the administration charge and apply the new administration charge to loans that enter repayment after the administration charge has been adjusted. Loans already in repayment will not be affected by the adjusted administration charge.

WSR 13-18-032

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed August 28, 2013, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-115.

Title of Rule and Other Identifying Information: WAC 182-557-0050 Health homes—General.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on October 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 9, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on October 8, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 30, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Strike subsection (5) of this section.

Reasons Supporting Proposal: The language was not approved by the Centers for Medicare and Medicaid Services (CMS) in the agency's state plan.

Statutory Authority for Adoption: RCW 41.05.021, chapter 316, Laws of 2011 (SSB 5394).

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, HCA, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Alison Robbins, HCA, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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

August 28, 2013
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-12-002, filed 5/22/13, effective 7/1/13)

WAC 182-557-0050 Health home—General. (1) The agency's health home program provides patient-centered care to beneficiaries who:

(a) Have a least one chronic condition as defined in WAC 182-557-0100;

(b) Be at risk of a second chronic condition with a minimum predictive risk score of 1.5; and

(c) Are at risk for high health costs, avoidable admissions to institutional care settings, and poor health outcomes.

(2) Health homes offer six care coordination activities to assist the beneficiary in self-managing his or her condition and navigating the health care system:

(a) Comprehensive or intensive care management including, but not limited to, assessing participant's readiness for self-management, promoting self-management skills, coordinating interventions tailored to meet the beneficiary's needs, and facilitating improved outcomes and appropriate use of health care services;

(b) Care coordination and health promotion;

(c) Comprehensive transitional care between care settings including, but not limited to, after discharge from an inpatient facility (hospital, rehabilitative, psychiatric, skilled nursing, substance use disorder treatment or residential habilitation setting);

(d) Individual and family support services to provide health promotion, education, training and coordination of covered services for beneficiaries and their support network;

(e) Referrals to community and support services; and

(f) Use of health information technology (HIT) to link services between the health home and beneficiaries' providers.

(3) The agency's health home program does not:

(a) Change the scope of services for which a beneficiary is eligible under medicare or a Title XIX medicaid program;

(b) Interfere with the relationship between a beneficiary and his or her chosen agency-enrolled provider(s);

(c) Duplicate case management activities the beneficiary is receiving from other providers or programs; or

(d) Substitute for established activities that are available through programs administered through the agency or other state agencies.

(4) Qualified health home providers must:

(a) Contract with the agency to provide services under this chapter to eligible beneficiaries;

(b) Accept the terms and conditions in the agency's contract;

(c) Be able to meet the network and quality standards established by the agency;

(d) Accept the rates established by the agency; and

(e) Comply with all applicable state and federal requirements.

((~~(5) The agency reserves the right to not contract with any otherwise qualified health home provider.~~))

WSR 13-18-033
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed August 28, 2013, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-028.

Title of Rule and Other Identifying Information: WAC 182-537-0200 School-based health care services for children in special education—Definitions, 182-537-0350 School-based health care services for children in special education—Provider qualifications, and 182-537-0600 School-based health care services for children in special education—School district requirements for billing and payment.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on October 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 9, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on October 8, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 30, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective March 18, 2013, the United States Department of Education revised 34 C.F.R. 300.154(d) related to parental consent for school districts to access public benefits or insurances. Parental consent is no longer required annually to pay for medicaid health care-related services under the Individual Disability Education Act (IDEA) Part B. For this reason, medicaid agency will no longer require annual prior, informal, written notification for parents or guardians by school districts to submit claims for third-party insurance or medicaid reimbursement. In addition, two changes were made in the definition section; and clarification was added that school districts' qualified health care providers must be enrolled with the medicaid agency, and that the supervising therapist must see the child face-to-face at the beginning of services and at least once more during the school year.

Reasons Supporting Proposal: To comply with 34 C.F.R. 300.154(d) and chapter 182-502 WAC concerning provider enrollment.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 74.09.500.

Rule is necessary because of federal law, 34 C.F.R. 300.154(d).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katey Simetra, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: James Harvey, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1153.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and has concluded that they do not impose costs for small businesses and the joint administrative rules review committee has not requested the preparation of a small business economic impact statement.

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

August 28, 2013
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-05-017, filed 2/7/13, effective 3/10/13)

WAC 182-537-0200 School-based health care services for children in special education—Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Agency" - See WAC 182-500-0010.

"Amount, duration, and scope" - A written statement within the individualized education program (IEP) that addresses sufficiency of services to achieve a particular goal (a treatment plan for *how much* of a health care related service will be provided, *how long* a service will be provided, and *what* the service is).

"Assessment" - For purposes of this chapter an assessment is made-up of medically necessary tests given to an individual child by a licensed professional to evaluate whether a child is determined to be a child with a disability, and in need of special education and related services. Assessments are a part of the evaluation and re-evaluation processes and must accompany the IEP.

"Child with a disability" - For purposes of this chapter, a child with a disability is a child evaluated and determined to need special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;
- Deaf/blindness;
- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;
- Hearing loss (including deafness);
- Mental retardation;
- Multiple disabilities;
- Orthopedic impairment;
- Other health impairment;
- Serious emotional disturbance (emotional behavioral disturbance);
- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; and
- Visual impairment (including blindness).

"Core provider agreement" - The basic contract the agency holds with providers serving medical assistance clients.

"Direct health care related services" - Services provided directly to a child either one-on-one or in a group setting. This does not include special education.

"Evaluation" - Procedures used to determine whether a child has a disability, and the nature and extent of the special education and related services are needed. (See WAC 392-172A-03005 through 392-172A-03080.)

"Face-to-face supervision" or **"direct supervision" -** Supervision that is conducted on-site, in-view, by an experienced licensed health care professional to assist the supervisee to develop the knowledge and skills to practice effectively, including administering the treatment plan.

"Fee-for-service" - See WAC 182-500-0035.

"Health care related services" - Developmental, corrective, and other supportive services required to assist an eligible child to benefit from special education. For the purposes of the school-based health care services program, related services include:

- Audiology;
- Counseling;
- Nursing;
- Occupational therapy;
- Physical therapy;
- Psychological assessments; and
- Speech-language therapy.

"Individualized education program (IEP)" - A written statement of an educational program for a child eligible for special education. (See WAC 392-172A-03090 through 392-172A-03135.)

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

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

"Plan of care" or **"treatment plan" -** A written document that outlines the health care related needs of a child in special education. The plan is based on input from the health care professional and written approval from the parent or guardian.

"Provider" - See WAC 182-500-0085.

"Qualified health care provider" - See WAC 182-537-0350.

"Reevaluation" - Procedures used to determine whether a child continues to be in need of special education and related services. (See WAC 392-172A-03015.)

"Regular consultation" - Face-to-face contact between the supervisor and supervisee that occurs no less than once per month.

"Revised Code of Washington (RCW)" - Washington state law.

"School-based health care services program" or **"SBS" -** School-based health care services for children in special education that are diagnostic, evaluative, habilitative, rehabilitative in nature((~~, and must be based on medical necessity~~)); are based on the child's medical needs; and are included in the child's individualized education plan (IEP). The agency pays school districts for school-based health care services delivered to ((~~medicaid-enrolled~~)) medicaid-eligible children in special education ((~~in accordance with~~)) under Section ((~~1905~~)) 1903(c) of the Social Security Act, and to individuals under the Disabilities Education Act (IDEA) Part B.

"School-based health care services program specialist" or **"SBHS specialist" -** An individual identified in the interagency agreement school district reimbursement contract.

"Special education" - Specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education. Refer to WAC 392-172A-01175.

"Washington Administrative Code (WAC)" - Codified rules of the state of Washington.

AMENDATORY SECTION (Amending WSR 13-05-017, filed 2/7/13, effective 3/10/13)

WAC 182-537-0350 School-based health care services for children in special education—Provider qualifications. The medicaid agency pays school districts to provide certain health care-related services (see WAC 182-537-0400). These services must be delivered by qualified health care providers who are enrolled with the medicaid agency and hold a current professional license:

(1) Audiology services must be delivered by a licensed audiologist.

(2) Counseling services must be delivered by:

(a) A licensed independent social worker (LiCSW);

(b) A licensed advanced social worker (LiACSW);

(c) A licensed mental health counselor (LMHC); or

(d) A licensed mental health counselor associate (LMHCA) under the supervision of a department of health-approved licensed supervisor.

(3) Nursing services must be delivered by:

(a) A licensed registered nurse (RN);

(b) A licensed practical nurse (LPN) who is supervised by an RN; or

(c) A noncredentialed school employee who is delegated certain limited health care tasks by an RN and is supervised according to professional practice standards (see RCW 18.79.260).

(4) Occupational therapy services must be delivered by:

(a) A licensed occupational therapist (OT); or

(b) A licensed occupational therapist assistant (OTA) who is supervised by a licensed occupational therapist.

(5) Physical therapy services must be delivered by:

(a) A licensed physical therapist (PT); or

(b) A licensed physical therapist assistant (PTA) who is supervised by a licensed physical therapist.

(6) Psychological services must be delivered by a licensed psychologist.

(7) Speech therapy services must be delivered by:

(a) A licensed speech-language pathologist (SLP); or

(b) A speech-language pathology assistant (SLPA) who:

(i) Has graduated from a speech-language pathology assistant program((~~,~~)) at a board-approved institution; and

(ii) Is directly supervised ((~~[by]~~)) by a speech-language pathologist with a current certificate of clinical competence (CCC).

(8) For services provided under the supervision of a physical therapist, occupational therapist or speech-language

pathologist, nurse, or counselor/social worker, the following requirements apply:

(a) The nature, frequency, and length of the supervision must be provided in accordance with professional practice standards, and be sufficient to ensure a child receives quality therapy services;

(b) The supervising therapist must see the child face-to-face at the beginning of services and ((~~periodically~~)) at least once more during the school year;

(c) At a minimum, supervision must be face-to-face communication between the supervisor and the supervisee once per month. Supervisors are responsible for approving and cosigning all treatment notes written by the supervisee before submitting claims for payment; and

(d) Documentation of supervisory activities must be recorded and available to the agency or its designee upon request.

(9) ((~~It is the responsibility of~~)) The school district ((~~to~~)) must assure providers meet the professional licensing and certification requirements.

(10) Licensing exemptions found in the following regulations do not apply to federal medicaid reimbursement for the services indicated below:

(a) Counseling as found in RCW 18.225.030;

(b) Psychology as found in RCW 18.83.200;

(c) Social work as found in RCW 18.320.010; and

(d) Speech therapy as found in RCW 18.35.195.

AMENDATORY SECTION (Amending WSR 13-05-017, filed 2/7/13, effective 3/10/13)

WAC 182-537-0600 School-based health care services for children in special education—School district requirements for billing and payment. To receive payment from the medicaid agency for providing school-based health care services to eligible children, a school district must:

(1) Have a current, signed core provider agreement (CPA) with the agency. A copy of the CPA must be on-site within the school district((~~;~~)).

(2) Have a current, signed, and executed interagency agreement with the agency. A copy of the agreement must be on-site within the school district((~~;~~)) for review as requested.

(3) Meet the applicable requirements in chapter 182-502 WAC((~~; and~~)).

(4) Comply with the agency's current, published ProviderOne billing and resource guide((~~;~~)).

(5) Bill according to the agency's current, published school-based health care services for children in special education medicaid provider guide, the school-based health care services fee schedule, and the intergovernmental transfer (IGT) process. After school districts receive their invoice from the agency, they ((~~have~~)) must provide their local match to the agency within one hundred twenty days ((~~to provide the agency with their local match;~~)).

(6) Meet the applicable requirements in chapter 182-537 WAC((~~;~~)).

(7) Provide only health care related services identified through a current individualized education program (IEP)((~~;~~)).

(8) Use only licensed health care professionals, as described in WAC 182-537-0350 and the school-based care services for children in special education medicaid provider guide((~~;~~)).

(9) Meet documentation requirements in WAC 182-537-0700((~~; and~~

~~(10) Give parents or guardians prior, informal, written notification on an annual basis, that the school district may be submitting claims for third-party insurance or medicaid reimbursement~~)).

WSR 13-18-037
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed August 28, 2013, 1:55 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on October 15, 2013, at 9:30 a.m.

Date of Intended Adoption: October 15, 2013.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by October 4, 2013.

Assistance for Persons with Disabilities: Contact Shawna Erickson by October 11, 2013, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a 2014 Grays Harbor pilotage district annual tariff.

The proposed rule reflects an effective overall increase to the tariff of 4.0 percent or $212 per pilotage job.

The proposal as detailed calls for a 5.50 percent across-the-board increase in all tariff categories except as specified below:

Boarding Charge: No change.

Transportation Charge Per Assignment: No change.

Pension Charge: An increase from $353 to $362*.

*As the administrator of Grays Harbor pension funds for retired Grays Harbor pilots, Puget Sound pilots provides this calculation.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: RCW 88.16.035.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Grays Harbor pilotage dis-

trict expire on December 31, 2013. New rates must be set accordingly.

All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Port of Grays Harbor, public.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the proposed revisions is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

August 28, 2013
Peggy Larson
Executive Director

AMENDATORY SECTION (Amending WSR 12-23-065, filed 11/19/12, effective 1/1/13)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours January 1, ((~~2013~~)) 2014, through 2400 hours December 31, ((~~2013~~)) 2014.

CLASSIFICATION	RATE
Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:	
Draft and Tonnage Charges:	
Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.	
Draft	$((~~100.66~~)) 106.20 per meter or $((~~30.68~~)) 32.37 per foot
Tonnage	$((~~0.288~~)) 0.304 per net registered ton
Minimum Net Registered Tonnage	$((~~1,009.00~~)) 1,064.00
Extra Vessel (in case of tow)	$((~~565.00~~)) 596.00
Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged $((~~5,592.00~~)) 5,900.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.	
Boarding Charge:	
Per each boarding/deboarding from a boat or helicopter	$1,000.00
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	$((~~703.00~~)) 742.00
Delays per hour	$((~~165.00~~)) 174.00
Cancellation charge (pilot only)	$((~~276.00~~)) 291.00
Cancellation charge (boat or helicopter only)	$((~~827.00~~)) 872.00
Two Pilots Required:	
When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of $((~~703.00~~)) 742.00 and in addition, when a bridge is transited the bridge transit charge of $((~~303.00~~)) 320.00 shall apply.	
Pension Charge:	
Charge per pilotage assignment, including cancellations	$((~~353.00~~)) 362.00
Travel Allowance:	

CLASSIFICATION	RATE
Transportation charge per assignment	$100.00

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid $((~~931.00~~)) 982.00 for each day or fraction thereof, and the travel expense incurred.

Bridge Transit:

Charge for each bridge transited	$((~~303.00~~)) 320.00
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	$((~~829.00~~)) 875.00

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

WSR 13-18-045
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING

[Filed August 30, 2013, 8:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-051.

Title of Rule and Other Identifying Information: WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps, 170-290-0205 Daily child care rates—Licensed or certified family home child care providers, 170-290-0210 Tiered reimbursement, and 170-290-0240 Child care subsidy rates—In-home/relative providers.

Hearing Location(s): Department of Early Learning (DEL), State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on October 8, 2013, at 12 p.m.

Date of Intended Adoption: Not earlier than October 8, 2013.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by midnight on October 8, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by October 1, 2013, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending sections of, and adding a section to, chapter 170-290 WAC, Working connections and seasonal child care subsidy programs, to comply with sections 8 and 9 of recently enacted 2SHB 1723, enrolled as chapter 323, Laws of 2013, that took effect on July 28, 2013, and 3ESSB 5034, enrolled as chapter 4, Laws of 2013, that took effect on June 30, 2013. As a result, rules for the working connections child care (WCCC) program is revised to:

- Increase the base rate for all WCCC child care providers by two percent.
- Increase the subsidy rate by two percent for WCCC child care providers enrolling in level 2 in the early achievers program. Providers must complete level 2 and advance to level 3 within thirty months in order to maintain this increase.

Reasons Supporting Proposal: The proposed rules implement 2013 2SHB 1723 and 3ESSB 5034. In legislative hearings, child care licensees and licensee advocates supported passage of 2SHB 1723.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070; chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW as amended by chapters 323 and 4, Laws of 2013.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

August 30, 2013
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	$((~~28.53~~))	$((~~23.99~~))	$((~~22.67~~))	$((~~21.34~~))
	Half-Day	29.10	24.47	23.12	21.77
		$((~~14.28~~))	$((~~12.00~~))	$((~~11.34~~))	$((~~10.67~~))
		14.57	12.24	11.57	10.88
Spokane County	Full-Day	$((~~29.18~~))	$((~~24.54~~))	$((~~23.19~~))	$((~~21.83~~))
	Half-Day	29.76	25.03	23.65	22.27
		$((~~14.61~~))	$((~~12.28~~))	$((~~11.61~~))	$((~~10.91~~))
		14.90	12.53	11.84	11.13
Region 2	Full-Day	$((~~28.81~~))	$((~~24.05~~))	$((~~22.30~~))	$((~~19.73~~))
	Half-Day	29.39	24.53	22.75	20.12
		$((~~14.41~~))	$((~~12.03~~))	$((~~11.15~~))	$((~~9.88~~))
		14.70	12.27	11.37	10.08
Region 3	Full-Day	$((~~38.13~~))	$((~~31.79~~))	$((~~27.46~~))	$((~~26.67~~))
	Half-Day	38.89	32.43	28.01	27.20
		$((~~19.07~~))	$((~~15.89~~))	$((~~13.73~~))	$((~~13.34~~))
		19.45	16.21	14.00	13.61
Region 4	Full-Day	$((~~44.38~~))	$((~~37.06~~))	$((~~31.09~~))	$((~~28.00~~))
	Half-Day	45.27	37.80	31.71	28.56
		$((~~22.63~~))	$((~~18.54~~))	$((~~15.55~~))	$((~~14.00~~))
		23.08	18.91	15.86	14.28
Region 5	Full-Day	$((~~32.54~~))	$((~~28.00~~))	$((~~24.65~~))	$((~~21.88~~))
	Half-Day	33.19	28.56	25.14	22.32
		$((~~16.26~~))	$((~~14.00~~))	$((~~12.32~~))	$((~~10.95~~))
		16.59	14.28	12.57	11.17
Region 6	Full-Day	$((~~31.99~~))	$((~~27.46~~))	$((~~23.99~~))	$((~~23.46~~))
	Half-Day	32.63	28.01	24.47	23.93
		$((~~16.01~~))	$((~~13.73~~))	$((~~12.00~~))	$((~~11.74~~))
		16.33	14.00	12.24	11.97

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	$((~~24.29~~)) 24.78	$((~~24.29~~)) 24.78	$((~~21.12~~)) 21.54	$((~~21.12~~)) 21.54	$((~~18.78~~)) 19.16
	Half-Day	$((~~12.14~~)) 12.38	$((~~12.14~~)) 12.38	$((~~10.56~~)) 10.77	$((~~10.56~~)) 10.77	$((~~9.39~~)) 9.58
Spokane County	Full-Day	$((~~24.84~~)) 25.34	$((~~24.84~~)) 25.34	$((~~21.60~~)) 22.03	$((~~21.60~~)) 22.03	$((~~19.21~~)) 19.59
	Half-Day	$((~~12.42~~)) 12.67	$((~~12.42~~)) 12.67	$((~~10.80~~)) 11.02	$((~~10.80~~)) 11.02	$((~~9.60~~)) 9.79
Region 2	Full-Day	$((~~25.65~~)) 26.16	$((~~25.65~~)) 26.16	$((~~22.30~~)) 22.75	$((~~19.95~~)) 20.35	$((~~19.95~~)) 20.35
	Half-Day	$((~~12.82~~)) 13.08	$((~~12.82~~)) 13.08	$((~~11.15~~)) 11.37	$((~~9.97~~)) 10.17	$((~~9.97~~)) 10.17
Region 3	Full-Day	$((~~34.03~~)) 34.71	$((~~34.03~~)) 34.71	$((~~29.33~~)) 29.92	$((~~25.81~~)) 26.33	$((~~23.46~~)) 23.93
	Half-Day	$((~~17.02~~)) 17.36	$((~~17.02~~)) 17.36	$((~~14.67~~)) 14.96	$((~~12.91~~)) 13.17	$((~~11.74~~)) 11.97
Region 4	Full-Day	$((~~40.04~~)) 40.84	$((~~40.04~~)) 40.84	$((~~34.81~~)) 35.51	$((~~29.33~~)) 29.92	$((~~28.16~~)) 28.72
	Half-Day	$((~~20.03~~)) 20.43	$((~~20.03~~)) 20.43	$((~~17.42~~)) 17.77	$((~~14.67~~)) 14.96	$((~~14.08~~)) 14.36
Region 5	Full-Day	$((~~26.99~~)) 27.53	$((~~26.99~~)) 27.53	$((~~23.46~~)) 23.93	$((~~22.30~~)) 22.75	$((~~19.95~~)) 20.35
	Half-Day	$((~~13.50~~)) 13.77	$((~~13.50~~)) 13.77	$((~~11.74~~)) 11.97	$((~~11.15~~)) 11.37	$((~~9.97~~)) 10.17
Region 6	Full-Day	$((~~26.99~~)) 27.53	$((~~26.99~~)) 27.53	$((~~23.46~~)) 23.93	$((~~23.46~~)) 23.93	$((~~22.30~~)) 22.75
	Half-Day	$((~~13.50~~)) 13.77	$((~~13.50~~)) 13.77	$((~~11.74~~)) 11.97	$((~~11.74~~)) 11.97	$((~~11.15~~)) 11.37

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section).

Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

NEW SECTION

WAC 170-290-0210 Tiered reimbursement. Starting September 1, 2013, providers receiving payment under the WCCC program will receive a two percent increase in the subsidy rate, calculated on the base rate, for enrolling in level 2 in the early achievers program. Providers must complete level 2, advance to level 3 within thirty months, and maintain a level 3 rating in order to maintain this increase.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When a consumer employs an in-home/relative provider, DSHS pays the lesser of the following to an eligible in-home/relative provider for child care:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy rate of two dollars and ((~~twenty~~)) twenty-four cents per hour for the child who needs the greatest number of hours of care and two dollars and ((~~seventeen~~)) twenty-one cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

WSR 13-18-048
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed August 30, 2013, 11:40 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-808-990 Chiropractic fees and renewal cycle, proposing to reduce the chiropractic application/initial licensing fee and active license renewal fee.

Hearing Location(s): Department of Health (DOH), Point Plaza East, Rooms 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on October 14, 2013, at 1:00 p.m.

Date of Intended Adoption: November 15, 2013.

Submit Written Comments to: Dick Goldsmith, Health Systems Quality Assurance, DOH, P.O. Box 47830, Olympia, WA 98504-7830, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-4626, by October 14, 2013.

Assistance for Persons with Disabilities: Contact Dick Goldsmith by October 4, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current licensing fees generate more revenue than is needed to cover the full cost of administering the chiropractic licensing program. The department is proposing to amend WAC 246-808-990 to reduce the application/initial licensing fee and active license renewal fee for doctors of chiropractic. The proposed rule also makes housekeeping revisions which clarify the applicability of the fees and have no other impact.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on licensure costs. Reducing fees to the proposed levels will align revenue with the program's expenses and enables reserves to be maintained should unanticipated events, such as increased disciplinary costs, occur.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Dick Goldsmith, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4985; Implementation and Enforcement: Leann Yount, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98502 [98501], (360) 236-4856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(f), an SBEIS is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

August 28, 2013
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-808-990 Chiropractic fees and renewal cycle. (1) Licenses and registrations must be renewed on the

practitioner's birthday every year as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for chiropractic ((~~license~~)) licensure:

Title of Fee	Fee
Application/full examination or reexamination	$((~~630.00~~)) 530.00
Temporary permit application	205.00
Temporary practice permit	105.00
Preceptorship	155.00
Active license renewal	((~~582.00~~)) 482.00
Late renewal penalty	302.00
Expired active license reissuance	302.00
Inactive license renewal	257.00
Expired inactive license reissuance	157.00
Duplicate license	30.00
Certification of license	30.00
UW online access fee (HEAL-WA)	16.00

(3) The following nonrefundable fees will be charged for chiropractic X-ray technician registration:

Title of Fee	Fee
Application	47.00
Original registration	47.00
Renewal	62.00
Late renewal penalty	62.00
Expired registration reissuance	62.00
Duplicate registration	30.00
Certification of registration	30.00

WSR 13-18-049
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed August 30, 2013, 11:52 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 246-232 WAC, Radioactive material—Licensing applicability; chapter 246-233 WAC, Radioactive materials—General licenses; and chapter 246-235 WAC, Radioactive materials—Specific licenses. The department is proposing to adopt federal rule changes to make Washington state rules consistent with the federal Nuclear Regulatory Commission's (NRC) rules and making editorial changes.

Hearing Location(s): Department of Health (DOH), Town Center 2, Room 419, 111 Israel Road S.E., Tumwater, WA 98501, on October 8, 2013, at 10:00 a.m.

Date of Intended Adoption: October 25, 2013.

Submit Written Comments to: Michelle K. Austin, P.O. Box 47827, Tumwater, WA 98504-7827, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2266, by October 8, 2013.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by October 1, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to make state rules consistent with NRC's rule changes titled "2001-1: Requirements for certain generally licensed industrial devices containing byproduct material," "2007-2: Exemptions from licensing, general licenses and distribution of byproduct material: licensing and reporting requirements," and "2012-1: Change of compatibility of 10 CFR 31.5 and 31.6." Under the formal state agreement between the governor and NRC, the office of radiation protection (the state radiation control program) is required to remain compatible with NRC rules. This is done through rule revisions.

Reasons Supporting Proposal: This rule making is required to comply with RCW 70.98.050 (4)(d) and a formal agreement signed between the state of Washington and the Atomic Energy Commission under section 274 of the Atomic Energy Act of 1954 as amended (42 U.S.C. sec. 2021), the Energy Policy Act of 2005.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050.

Rule is necessary because of federal law, 65 F.R. 79162, 72 F.R. 58473, and 77 F.R. 3640.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Curt DeMaris, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3223; Implementation and Enforcement: Victoria Dix, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3225.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

A cost-benefit analysis is not required under RCW 34.05.328. Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

August 28, 2013
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-232-001 Purpose and scope. (1) This chapter prescribes rules governing licensing of radioactive material. ((~~A~~)) No person ((~~may not~~)) shall manufacture, produce, transfer, receive, acquire, own, possess, or use((~~, transfer, own or acquire~~)) radioactive material except:

(a) As authorized in a specific or general license issued under chapters 246-233 or 246-235 WAC;

(b) As authorized in a specific or general license issued under regulations of NRC or an agreement state equivalent to chapters 246-233 or 246-235 WAC; or

(c) As otherwise provided in this chapter.

(2) In addition to the requirements of this chapter, and chapters 246-233 or 246-235 WAC, all licensees must comply with chapters 246-220, 246-221, 246-222, 246-231, 246-247, and 246-254 WAC. Licensees engaged in the practice of nuclear medicine are subject to chapter 246-240 WAC, licensees engaged in industrial radiographic operations are subject to chapter 246-243 WAC, licensees using sealed sources in the healing arts are subject to chapter 246-240 WAC, licensees using radioactive material in well logging and subsurface tracer studies are subject to chapter 246-244 WAC, licensees engaged in land disposal of radioactive waste are subject to chapter 246-250 WAC, and licensees owning or operating uranium or thorium mills and associated mill tailings are subject to chapter 246-252 WAC.

(3) No person may introduce radioactive material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-232-006 Exemption of certain source material. (1) A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses, ((~~owns, or~~)) transfers, or delivers, source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(2) A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material, provided such person shall not refine or process such ore unless authorized to do so in a specific license.

(3) A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses or transfers:

(a) Any quantities of thorium contained in:

(i) Incandescent gas mantles;

(ii) Vacuum tubes;

(iii) Welding rods;

(iv) Electric lamps for illuminating purposes if each lamp contains fifty milligrams or less of thorium;

(v) Germicidal lamps, sunlamps and lamps for outdoor or industrial lighting if each lamp contains two grams or less of thorium;

(vi) Rare earth metals and compounds, mixtures, and products containing 0.25 percent or less by weight thorium, uranium, or any combination of these; or

(vii) Personnel neutron dosimeters if each dosimeter contains 1.85 gigabecquerels (50 milligrams) or less of thorium;

(b) Source material contained in the following products:

(i) Glazed ceramic tableware if the glaze contains twenty percent or less by weight source material; and

(ii) Piezoelectric ceramic containing two percent or less by weight source material;

(c) Photographic film, negatives and prints containing uranium or thorium;

(d) Any finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys if the thorium content of the alloy is four percent or less by weight. The exemption contained in this subparagraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part;

(e) Thorium contained in finished optical lenses if each lens contains thirty percent or less by weight of thorium. The exemption contained in this subparagraph shall not be deemed to authorize either:

(i) The shaping, grinding or polishing of lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens; or

(ii) The receipt, possession, use or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(f) Uranium contained in detector heads for use in fire detection units if each detector head contains 185 becquerels (0.005 microcuries) or less of uranium; or

(g) Thorium contained in any finished aircraft engine part containing nickel-thoria alloy if:

(i) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(ii) The thorium content in the nickel-thoria alloy is four percent or less by weight.

(4) The exemptions in subsection (3) of this section do not authorize the manufacture of any of the products described.

AMENDATORY SECTION (Amending WSR 01-02-068, filed 12/29/00, effective 1/29/01)

WAC 246-232-007 Exemption of certain depleted uranium items. (1) A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses or transfers:

(a) Depleted uranium contained in counterweights installed in aircraft, rockets, projectiles and missiles, or stored or handled in connection with installation or removal of such counterweights if:

(i) The counterweights are manufactured in accordance with a specific license issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC authorizing distribution by the licensee pursuant to 10 C.F.R. Part 40;

(ii) Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM"*;

(iii) Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED"*; and

(iv) The exemption contained in this subparagraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such counterweight other than repair or restoration of any plating or other covering;

*Note: The requirements specified in (c) (v) (B) and (C) of this subsection need not be met by counterweights manufactured prior to December 31, 1969: Provided, That such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM," as previously required by the ((~~regulations~~)) rules.

(b) Natural or depleted uranium used as shielding constituting part of any shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or in an equally fire resistant metal of a minimum wall thickness of 3.2 millimeters.

(2) The exemptions in this subsection do not authorize the manufacture of any of the products described.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-232-008 Exemption of certain timepieces, hands or dials. A person is exempt from ((~~these regulations~~)) the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses, transfers, owns or acquires, and does not apply radioactive material to, or incorporate radioactive material into, the following timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation*:

*Note: ((~~Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or by-product material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission~~)) No person may introduce radioactive material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

(1)(a) 925 megabecquerels (25 millicuries) ((~~or less~~)) of tritium per timepiece;

(b) 185 megabecquerels (5 millicuries) ((~~or less~~)) of tritium per hand;

(c) 555 megabecquerels (15 millicuries) ((~~or less~~)) of tritium per dial (bezels when used shall be considered as part of the dial);

(d) 3.7 megabecquerels (100 microcuries) ((~~or less~~)) of promethium-147 per watch or 7.4 megabecquerels (200 microcuries) ((~~or less~~)) of promethium-147 per any other timepiece;

(e) 740 kilobecquerels (20 microcuries) ((~~or less~~)) of promethium-147 per watch hand or 1.48 megabecquerels (40 microcuries) ((~~or less~~)) of promethium-147 per other timepiece hand;

(f) 2.22 megabecquerels (60 microcuries) ((~~or less~~)) of promethium-147 per watch dial or 4.44 megabecquerels (120 microcuries) ((~~or less~~)) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial);

(2) The levels of radiation from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(a) For wrist watches, 1 microgray (0.1 millirad) per hour at 10 centimeters from any surface;

(b) For pocket watches, 1 microgray (0.1 millirad) per hour at 1 centimeter from any surface;

(c) For any other timepiece, 2 micrograys (0.2 millirad) per hour at 10 centimeters from any surface.

(3) 37 kilobecquerels (1 microcurie) of radium-226 per timepiece in intact timepieces manufactured prior to ((~~the effective date of these regulations~~)) November 30, 2007.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-232-009 Exemption of certain items containing radioactive material. A person is exempt from ((~~these regulations~~)) the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent the person receives, possesses, uses, transfers, owns or acquires, and does not apply radioactive material to, or incorporate radioactive material into, the following products:*

*Note: ((~~Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or by-product material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission~~)) No person may introduce radioactive material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

(1) ((~~Lock illuminators containing 555 megabecquerels (15 millicuries) or less of tritium or 74 megabecquerels (2 millicuries) or less of promethium-147 installed in automobile locks. The levels of radiation from each lock illuminator containing promethium-147 will not exceed 10 micrograys (1 millirad) per hour at 1 centimeter from any surface when~~

~~measured through 50 milligrams per square centimeter of absorber.~~

~~(2) Precision~~)) Balances of precision containing not more than 37 megabecquerels (1 millicurie) ((~~or less~~)) of tritium per balance or 18.5 megabecquerels (0.5 millicurie) ((~~or less~~)) of tritium per balance part manufactured before December 17, 2007.

(((~~(3) Automobile shift quadrants containing 925 megabecquerels (25 millicuries) or less of tritium.~~

~~(4)~~)) (2) Marine compasses containing not more than 27.8 gigabecquerels (750 millicuries) ((~~or less~~)) of tritium gas and other marine navigational instruments containing not more than 9.25 gigabecquerels (250 millicuries) ((~~or less~~)) of tritium gas manufactured before December 17, 2007.

(((~~(5) Thermostat dials and pointers containing 925 megabecquerels (25 millicuries) or less of tritium per thermostat.~~

~~(6)~~)) (3) Ionization chamber smoke detectors containing not more than 37 kilobecquerels (1 microcurie) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(4) Electron tubes* ((~~if~~)) provided that each tube contains no more than one of the following specified quantities of radioactive material and the levels of radiation from each electron tube do not exceed 10 micrograys (1 millirad) per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber:

(a) 5.55 gigabecquerels (150 millicuries) ((~~or less~~)) of tritium per microwave receiver protector tube or 370 megabecquerels (10 millicuries) ((~~or less~~)) of tritium per any other electron tube;

(b) 37 kilobecquerels (1 microcurie) ((~~or less~~)) of cobalt-60;

(c) 185 kilobecquerels (5 microcuries) ((~~or less~~)) of nickel-63;

(d) 1.11 megabecquerels (30 microcuries) ((~~or less~~)) of krypton-85;

(e) 185 kilobecquerels (5 microcuries) ((~~or less~~)) of cesium-137;

(f) 1.11 megabecquerels (30 microcuries) ((~~or less~~)) of promethium-147((~~;~~

~~(g) 37 kilobecquerels (1 microcurie) or less of radium-226.~~)).

*Note: For purposes of this ((~~subdivision~~)) subsection, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents.

(((~~(7)~~)) (5) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more ((~~but not to exceed 10 exempt~~)) sources of radioactive material((~~.~~)), provided that:

(a) Each ((~~individual~~)) source ((~~shall not exceed 1.85 kilobecquerels (0.05 microcuries) of americium-241 or the applicable~~)) contains not more than one exempt quantity set forth in WAC 246-232-120, Schedule B((~~.~~)), exempt quantities of radioactive materials; and

(b) ((~~An individual source may contain more than one radionuclide but the total quantity in the individual source shall not exceed unity based on the sum of the fractional parts of one or more of the exempt quantities set forth in WAC 246-232-120, Schedule B. For purposes of this subsection, 1.85 kilobecquerels (0.05 microcuries) of americium-241 is considered an exempt quantity.~~

~~(8) Spark gap irradiators containing 37 kilobecquerels (1 microcurie) or less of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least three gallons (11.4 liters) per hour.~~)) Each instrument contains no more than 10 exempt quantities. For purposes of this subsection, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials, provided that the sum of such fractions must not exceed unity.

(c) For purposes of this subsection, 1.85 kilobecquerels (0.05 microcurie) of americium-241 is considered an exempt quantity.

AMENDATORY SECTION (Amending WSR 01-02-068, filed 12/29/00, effective 1/29/01)

WAC 246-232-010 Exempt concentrations and exempt quantities. This section shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

(1) Exempt concentrations.

(a) Except as provided in (b) of this subsection, a person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses, transfers, owns or acquires, and does not apply radioactive material to, or incorporate radioactive material into, products or materials containing radioactive material in concentrations ((~~less than or equal to~~)) in excess of those ((~~listed~~)) in WAC 246-232-130, Schedule C, exempt concentrations.

(b) No person may introduce radioactive material into a product or material((~~,~~)) knowing, or having reason to believe, that it will be transferred to persons exempt under (((~~(a) of~~)) this ((~~subsection~~)) section or equivalent regulations of the ((~~United States Nuclear Regulatory Commission, any~~)) NRC or an agreement state ((~~or licensing state~~)), except in accordance with a specific license issued ((~~under WAC 246-235-105 or the general license provided in WAC 246-232-040~~)) by the NRC, Washington, D.C. 20555.

(c) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that this person transfers radioactive material contained in a product or material in concentrations not in excess of those specified in WAC 246-232-130, Schedule C, and introduced into the product or material by a licensee holding a specific license issued by the NRC expressly authorizing such manufacture or introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) Exempt quantities.

(a)(i) Except as provided in (b) ((~~and (c)~~)) through (d) of this subsection, ((~~a~~)) any person is exempt from ((~~these regulations~~)) the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that such person receives, possesses, uses, transfers, owns, or acquires, and does not apply radioactive material to, or incorporate radioactive material into, radioactive material in individual quantities, each of which ((~~is less than or equal to~~)) does not exceed the applicable quantity set forth in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials.

(ii) Any person who possesses radioactive material received or acquired under the general license is exempt from the requirements for a license set forth in chapters 246-333, 246-235 WAC, and this chapter to the extent that such person uses, transfers, or owns such radioactive material. Such exemption does not apply for Radium-226 or use by agreement states whose regulations formerly contained a general license for small quantities of radioactive material.

(b) This subsection does not authorize the production, packaging ((~~or~~)), repackaging, or transfer of radioactive material for the purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(c) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under ((~~subsection (2) of~~)) this section or equivalent ((~~regulations~~)) rules of the ((~~United States Nuclear Regulatory Commission~~)) NRC or ((~~any~~)) an agreement state ((~~or licensing state~~)), except in accordance with a specific license issued by the ((~~United States Nuclear Regulatory Commission, under Section 32.18 of 10 C.F.R. Part 32 or by the department under WAC 246-235-105 which license states that the radioactive material may be transferred by the licensee to persons exempt under subsection (2) of this section or the equivalent regulations of the United States Nuclear Regulatory Commission or any agreement state or licensing state~~)) NRC, Washington, D.C. 20555.

(d) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by these rules.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-232-011 Exemption of certain self-luminous products containing radioactive material(s). (1) Hydrogen-3 (Tritium), krypton-85, or promethium-147. A person is exempt from ((~~these regulations~~)) the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses, transfers, owns or acquires, and does not manufacture, process, produce, apply radioactive material to, incorporate radioactive material into, or initially transfer for sale or distribution, self-luminous products containing hydrogen-3 (tritium), krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, imported or initially transferred in accordance with a specific license issued by the ((~~United States Nuclear Regulatory Commission under Section 32.22 of 10 C.F.R. Part 32, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements~~)) NRC. The exemption in this subsection does not apply to hydrogen-3, (tritium), krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

(2) ((~~Radium-226. A person is exempt from these regulations to the extent that the person receives, possesses, uses, transfers or owns articles containing less than 3.7 kilobecquerels (0.1 microcurie) of radium-226 which were manufactured prior to October 1983.~~)) No person may introduce radioactive material into a product or material knowing, or having reason to believe, that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

AMENDATORY SECTION (Amending WSR 01-02-068, filed 12/29/00, effective 1/29/01)

WAC 246-232-012 Exemption of certain gas and aerosol detectors containing radioactive material. (1) A person is exempt from ((~~these regulations~~)) the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses, transfers, owns or acquires, and does not apply radioactive material to, or incorporate radioactive material into, manufacture, process or produce, radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards if the detectors have been manufactured, imported, or transferred in accordance with a specific license issued by the ((~~United States Nuclear Regulatory Commission* or an agreement state, under Section 32.26 of 10 C.F.R. Part 32, or licensing state under WAC 246-235-105, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements~~)) NRC.

((~~*Note: Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or by-product material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission, Washington, D.C. 20555.~~))

(2) ((~~Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an agreement state shall be considered exempt under subsection (1) of this section if the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device and if the device meets the requirements of WAC 246-235-105.~~

~~(3) Gas and aerosol detectors containing naturally occurring and accelerator-produced radioactive material (NARM) previously manufactured and distributed in accordance with a specific license issued by a licensing state shall be considered exempt under subsection (1) of this section if the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and if the device meets the requirements of WAC 246-235-105.~~)) No person may introduce radioactive material into a product or material knowing, or having reason to believe, that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-232-014 Exemption of C-14 urea diagnostic capsules for human use. (1) Except as provided in subsections (2) and (3) of this section, a person is exempt from the requirements for a license ((~~set forth in~~)) and from this chapter and chapters 246-233 and 246-235 WAC if the person receives, possesses, uses, transfers, owns, or acquires, and does not apply radioactive material to, or incorporate radioactive material into, capsules containing 37 kilobequerels (1 microcurie) of carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in-vivo" diagnostic use for humans.

(2) A person who desires to use the capsules for research involving human subjects ((~~shall~~)) must apply for and receive a specific license under chapters 246-240 and 246-235 WAC.

(3) A person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution these capsules ((~~shall apply for and receive~~)) must do so in accordance with a specific license ((~~from~~)) issued by the ((~~United States Nuclear Regulatory Commission under Section 32.21 of 10 C.F.R. Part 32~~)) NRC, Washington, D.C. 20555.

(4) Nothing in this section relieves persons from complying with applicable United States Food and Drug Administration, ((~~other~~)) federal, and state requirements governing receipt, administration, and use of drugs.

AMENDATORY SECTION (Amending WSR 04-04-055, filed 1/30/04, effective 3/1/04)

WAC 246-232-020 Types of licenses. Licenses for radioactive material((~~s~~)) are of two types: General and specific.

(1) A general license((~~s~~)) is provided ((~~in chapter 246-233 WAC are~~)) by regulation and grants authority to a person for certain activities involving radioactive material, and is effective without ((~~the~~)) filing ((~~of~~)) an application((~~s~~)) with the department or ((~~the~~)) issuance of licensing documents to ((~~the~~)) a particular person((~~s, although~~)). However, registration or the filing of a certificate with the department may also be required by the particular general license. The general licensee is subject to all other applicable ((~~portions of these regulations~~)) rules and any limitations of the general license.

(2) ((~~Specific licenses require the submission~~)) The department issues a specific license to a named person, after review and approval of an application ((~~to the department and the issuance of a licensing document by the department~~)). The licensee is subject to all applicable ((~~portions of these regulations as well as~~)) rules, including chapter 246-235 WAC, Radioactive materials - Specific licenses, and any limitations specified in the ((~~licensing document~~)) specific license. (((~~See chapter 246-235 WAC.~~)))

AMENDATORY SECTION (Amending WSR 04-04-055, filed 1/30/04, effective 3/1/04)

WAC 246-232-040 Reciprocal recognition of licenses. Before radioactive material can be used at any temporary job site, the jurisdictional status of the job site must be determined. Authorization for use of radioactive material at job sites under exclusive federal jurisdiction must be obtained from the appropriate regional office of the NRC, Washington, D.C. 20555. Before radioactive materials can be used as a temporary job site in another state, authorization must be obtained from that state if it is an agreement state, or from the NRC if it is a nonagreement state.

(1) ((~~Subject to these regulations, any~~)) A person ((~~who holds~~)) authorized by a ((~~specific~~)) license ((~~from~~)) issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC or ((~~any~~)) an agreement state ((~~or licensing state, and~~)), may obtain authorization from the department to work in Washington state provided:

(a) The out-of-state license is issued by the ((~~agency having~~)) NRC or agreement state with jurisdiction where the licensee maintains an office for directing the licensed ((~~activity~~)) work and ((~~at which~~)) for retaining radiation safety records ((~~are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within this~~));

(b) The out-of-state licensee must not possess or use radioactive materials or conduct authorized work in Washington state for ((~~a period not in excess of~~)) more than one hundred eighty days in that twelve month period which ((~~commences~~)) starts the date approval is granted, and the appropriate fee is received((~~,~~)) by the department ((~~provided that:~~

~~(a)~~)), as required in chapter 246-254 WAC;

(c) The out-of-state licensing document ((~~does not limit the activity authorized by such document to specified installations or locations~~)) authorizes the work conducted;

(((~~(b)~~))) (d) The licensed ((~~activity~~)) work is not conducted in an area under exclusive federal jurisdiction;

(((~~(c)~~))) (e) The appropriate fee is currently paid, as required in chapter 246-254 WAC. Licensees send fees to Washington State Department of Health, Revenue Accounting, P.O. Box 1099, Olympia, Washington 98504-1099;

(f) The out-of-state licensee notifies the department in writing ((~~and pays or has paid the appropriate fee (refer to chapter 246-254 WAC),~~)) at least three days ((~~prior to~~)) before each entry ((~~to the~~)) into Washington state to ((~~engage in such activity~~)) conduct licensed work.

(i) The written notification must be sent to the Radioactive Materials Section, Department of Health, ((~~Mailstop~~))

P.O. Box 47827, Olympia, Washington 98504-7827 ((and the fee should be sent to Washington State Department of Health, Revenue Accounting, P.O. Box 1099, Olympia, Washington 98504. Such)). Fax, e-mail, or other notifications may be approved by the department.

(ii) The written notification ((shall indicate the)) must include use and storage location(s), ((period,)) start and end dates of licensed work, and type of proposed possession and use ((within the)) in Washington state, and ((shall be accompanied by copies of the pertinent)) must include licensing documents authorizing the licensed work.

(iii) If((, for a specific case,)) an unexpected need or emergency means the three-day ((period)) notice is impossible or would impose an undue hardship on the out-of-state licensee, the out-of-state licensee may((, upon)) telephone ((application to)) the department (((360-236-3220)) 360-236-3221), ((obtain)) for permission to proceed ((sooner)) immediately.

(iv) The department may waive the requirement for filing additional written notifications during the remainder of the twelve months following the receipt of the initial notification ((from a person engaging in activities under the general license provided in this subsection;

(d))).

(g) The out-of-state licensee ((complies with all applicable regulations of the department and with all the terms and conditions of the licensing document, except any such terms and conditions which may be inconsistent with applicable regulations of the department;

(e) The out-of-state licensee supplies such other information as the department may request; and

(f))) must:

(i) Comply with all terms and conditions of the licensing document issued by the licensing authority except such terms or conditions contrary to the requirements or rules of the department or this section;

(ii) Comply with all applicable rules, terms and conditions of the department; and

(iii) Promptly provide other information the department may request.

(h) The out-of-state licensee must request approval for changes in work locations, radioactive material, or work conducted if different from the most recent information provided to the department.

(i) The out-of-state licensee ((shall)) may not transfer or dispose of radioactive material ((possessed or used under the general license provided in this subsection)) except by transfer to a person((:

(i))) specifically licensed by the department or by the ((United States Nuclear Regulatory Commission,)) NRC or an agreement state ((or a licensing state)) to receive such material((; or

(ii) Exempt from the requirements for a license for such material under WAC 246-232-010(1))).

(j) The out-of-state specific licensee may possess or use radioactive material or conduct authorized work in offshore waters for more than one hundred eighty days in any calendar year, if the specific license issued by an agreement state or the NRC authorizes the specific licensee to possess or use radioactive material or conduct authorized work in offshore waters for an unlimited period of time.

(2) ((Notwithstanding the provisions of subsection (1) of this section, any)) A person who holds a specific license issued by the ((United States Nuclear Regulatory Commission,)) NRC or an agreement state ((or a licensing state)) authorizing the holder to manufacture, ((transfer,)) install, or service a device described in WAC 246-233-020 within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install((, transfer, demonstrate or)) and service ((a)) such device in this state in areas not under exclusive federal jurisdiction provided ((that)):

(a) Such person ((shall)) must file a report with the department within thirty days after the end of each calendar quarter in which any device is transferred to or from, or installed in this state. Each ((such)) report ((shall)) must identify each general licensee to or from whom such device is transferred by name and address, the ((type of)) device ((transferred)) manufacturer (or initial transferor), model number and serial number, and the quantity and type of radioactive material contained in the device;

(b) The device has been, and is, manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to ((such)) a person by the ((United States Nuclear Regulatory Commission,)) NRC or an agreement state ((or a licensing state));

(c) Such person ((shall assure)) must ensure that any labels required to be affixed to the device under ((regulations)) rules of the authority which licensed the manufacture of the device bear a statement that (("))removal of ((this)) the label is prohibited((")); and

(d) The ((holder of the)) specific ((license shall furnish to)) licensee must provide each general licensee to and from whom such device is transferred, or on whose premises such device is installed, a copy of the general license ((contained)) in WAC 246-233-020(((4))).

(3) The department may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by another agency, or any product distributed pursuant to such licensing document, upon determining that such action is necessary ((in order)) to prevent undue hazard to public health and safety, or to the environment, or to property.

AMENDATORY SECTION (Amending WSR 04-04-055, filed 1/30/04, effective 3/1/04)

WAC 246-232-050 Terms and conditions of licenses. (1) Each license issued pursuant to this part shall be subject to all the provisions of the act, as now or hereafter in effect, and to all rules, regulations, and orders of the department.

(2) No license issued or granted under chapters 246-232, 246-233 ((and)), or 246-235 WAC and no right to possess or ((utilize)) use radioactive material granted by any license issued pursuant to chapters 246-233 and 246-235 WAC shall be transferred, assigned, or in any manner disposed, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the department shall, after securing full information, find that the

transfer is in accordance with the provisions of the act, and ((~~shall~~)) gives its consent in writing.

(3) Each person licensed by the department pursuant to chapters 246-233 and 246-235 WAC shall confine use and possession of the material licensed to the locations and purposes authorized by the license.

(4) Approval of licensee's procedures by the department does not release the licensee from responsibility if adherence to these procedures results in undue exposure to individuals or loss of control of radioactive material.

(5) Each specific licensee ((~~shall~~)) must notify the department of health, office of radiation protection, in writing, ((~~within five working days~~)) immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(a) The licensee;

(b) ((~~A person~~)) An entity (as the term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) An affiliate (as the term is defined in 11 U.S.C. 101(2)) of the licensee.

(6) The specific licensee's bankruptcy notification must include:

(a) The bankruptcy court in which the petition for bankruptcy was filed;

(b) The date of the filing of the petition;

(c) A complete and detailed inventory of all radioactive material possessed under the license including nuclide, form, activity and planned disposition;

(d) An estimation of the type and quantities of radioactive material the licensee plans to continue to receive ((~~and/~~))or use on a routine basis;

(e) A description of security and storage for the radioactive material currently possessed;

(f) A plan for radioactive waste disposal, the estimated completion date(s), and the cost;

(g) An evaluation of facility and equipment contamination, estimate of clean-up costs, and a decontamination plan which includes a thorough description of how the cleanup will be funded and how it will be accomplished;

(h) An organizational chart specifying sole owners, partnerships, or officers in the corporation who have legal and fiscal responsibilities for the licensee;

(i) A description of any other changes affecting the terms and conditions of the radioactive materials license.

(7) Each specific licensee ((~~shall~~)) must notify the department within five working days if any items in subsection (6) of this section change during bankruptcy proceedings.

(8) The department will consider clean-up costs as part of the licensee's administrative costs if decontamination is necessary to comply with these regulations;

(9) Each general licensee ((~~that is~~)) required to register by WAC 246-233-020 (3)(k) ((~~shall~~)) must notify the department of health, radiation protection, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(a) The licensee;

(b) ((~~A person~~)) An entity (as that term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(10) The general licensee's bankruptcy notification must include:

(a) The bankruptcy court in which the petition for bankruptcy was filed; and

(b) The date of the filing of the petition.

(11) For the purposes of this section, "affiliate" means:

(a) A person as defined in WAC 246-220-010 that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the licensee (unless that person holds such securities (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities, or (ii) solely to secure a debt, if such person has not in fact exercised such power to vote);

(b) A corporation, twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the licensee;

(c) A person whose business is operated under a lease or operating agreement by a licensee, or person substantially all of whose property is operated under an operating agreement with the licensee; or

(d) A person that operates the business or substantially all of the property of the licensee under a lease or operating agreement.

AMENDATORY SECTION (Amending WSR 04-04-055, filed 1/30/04, effective 3/1/04)

WAC 246-232-060 Termination of licenses and decommissioning of sites and separate buildings or outdoor areas. (1) Each specific licensee shall immediately notify the department in writing when the licensee decides to permanently discontinue all activities involving materials authorized under the license and request termination of the license. This notification and request for termination of the license must include the reports and information specified in subsection (3)(c) and (d) of this section. The licensee is subject to the provisions of subsections (3) and (4) of this section, as applicable.

(2) No less than thirty days before the expiration date specified in a specific license, the licensee shall either:

(a) Submit an application for license renewal under WAC 246-235-050; or

(b) Notify the department in writing if the licensee decides not to renew the license.

(3) If a specific licensee does not submit an application for license renewal under WAC 246-235-050, the licensee shall on or before the expiration date specified in the license:

(a) Terminate use of radioactive material;

(b) Properly dispose of radioactive material;

(c) Submit a completed departmental form "Certificate of disposition of radioactive material" or equivalent; and

(d) Submit a radiation survey report to confirm the absence of radioactive materials or establish the levels of

radioactive contamination, unless the department determines a radiation survey report is not necessary.

(i) If no radioactive contamination attributable to activities conducted under the license is detected, the licensee shall submit a certification that no detectable radioactive contamination was found. If the information submitted under this paragraph and subsection (3)(c) and (d) of this section is adequate, the department will notify the licensee in writing that the license is terminated.

(ii) If detectable levels of radioactive contamination attributable to activities conducted under the license are found, the license continues in effect beyond the expiration date, if necessary, with respect to possession of residual radioactive material present as contamination until the licensee meets the criteria established in chapter 246-246 WAC and the department notifies the licensee in writing that the license is terminated. During this time, the licensee is subject to the provisions of subsection (4) of this section. In addition to the information submitted under subsection (3)(c) and (d) of this section, the licensee shall submit a plan for decontamination, if necessary.

(4) Each specific licensee who possesses residual radioactive material under subsection (3)(d)(ii) of this section, following the expiration of the ((~~facility and/or equipment date specified in the~~)) license, shall:

(a) Be limited to actions, involving radioactive material related to decontamination and preparation for release in accordance with chapter 246-246 WAC; and

(b) Continue to control entry to restricted areas until:

(i) Such areas are suitable for release in accordance with chapter 246-246 WAC;

(ii) Contaminated equipment complies with guidance contained in WAC 246-232-140, Schedule D; and

(iii) The department notifies the licensee in writing that the license is terminated.

(5) Each general licensee licensed under the provisions of WAC 246-233-040, shall immediately notify the department in writing when the licensee decides to discontinue all activities involving radioactive materials authorized under the general license. Such notification shall include a description of how the generally licensed material was disposed and the results of facility surveys, if applicable, to confirm the absence of radioactive materials.

(6) Within sixty days of the occurrence of any of the following, each specific licensee shall provide notification to the department in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the site, building, or outdoor area is suitable for release in accordance with chapter 246-246 WAC, or submit within twelve months of notification a decommissioning plan, if required by subsection (10)(a) of this section, and begin decommissioning upon approval of that plan if:

(a) The license has expired or has been revoked by the department; or

(b) The licensee has decided to permanently cease principal activities, as defined in this section, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the site, building, or outdoor area is unsuitable for release in accordance with chapter 246-246 WAC; or

(c) No principal activities under the license have been conducted for a period of twenty-four months; or

(d) No principal activities have been conducted for a period of twenty-four months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with chapter 246-246 WAC.

(7) As used in this section, principal activities means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(8) Coincident with the notification required by subsection (6) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to WAC 246-235-075 or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to subsection (10)(d)(v) of this section. Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the department.

(9) The department may grant a request to extend the time periods established in subsection (6) of this section if the department determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than thirty days before notification pursuant to subsection (6) of this section. The schedule for decommissioning set forth in subsection (6) of this section may not commence until the department has made a determination on the request.

(10)(a) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The department may approve an alternate schedule for submittal of a decommissioning plan required pursuant to subsection (6) of this section if the department determines that the alternative schedule is necessary to the effective con-

duct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in (a) of this subsection with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey;

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning;

(vi) A description of the physical security plan and material control and accounting plan provisions in place during decommissioning;

(vii) For decommissioning plans calling for completion of decommissioning later than twenty-four months after plan approval, the plan shall include a justification for the delay based on the criteria in subsection (12) of this section.

(e) The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(11)(a) Except as provided in subsection (12) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(b) Except as provided in subsection (12) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(12) The department may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted by consideration of the following:

(a) Whether it is technically feasible to complete decommissioning within the allotted twenty-four-month period;

(b) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted twenty-four-month period;

(c) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) Other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(13) As the final step in decommissioning, the licensee shall:

(a) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed certificate of disposition of radioactive material or equivalent information; and

(b) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in chapter 246-246 WAC. The licensee shall, as appropriate:

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per one hundred square centimeters—removable and fixed—for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(14) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in chapter 246-246 WAC; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in chapter 246-246 WAC; and

(d) Records required by subsections (16) and (18) of this section have been received.

(15) Specific licenses for uranium and thorium milling are exempt from subsections (6)(d), (9) and (10) of this section with respect to reclamation of tailings impoundments ((~~and/~~))or waste disposal areas.

(16) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than one hundred twenty days, in an unsealed form, shall forward the following records to the department:

(a) Records of disposal required by WAC 246-221-230 (8)(a); and

(b) Records of results required by WAC 246-221-230 (7)(h).

(17) If licensed activities are transferred or assigned in accordance with WAC 246-232-050(2), each licensee authorized to possess radioactive material, with a half-life greater than one hundred twenty days, in an unsealed form, shall transfer the following records to the new licensee and the new

licensee will be responsible for maintaining these records until the license is terminated:

(a) Records of disposal required by WAC 246-221-230 (8)(a); and

(b) Records of results required by WAC 246-221-230 (7)(h).

(18) Prior to license termination, each licensee shall forward the records required by WAC 246-235-075(6) to the department.

AMENDATORY SECTION (Amending Order 184, filed 7/24/91, effective 8/24/91)

WAC 246-232-080 Transfer of material. (1) No licensee shall transfer radioactive material except as authorized pursuant to this section.

(2) Except as otherwise provided in the license and subject to the provisions of this section, ((~~any~~)) a licensee may transfer radioactive material:

(a) To the department. A licensee may transfer material to the department only after receiving prior approval from the department;

(b) To the United States Department of Energy;

(c) To ((~~any~~)) a person exempt from the ((~~regulations~~)) rules in this part to the extent permitted under such exemption;

(d) To ((~~any~~)) a person authorized to receive such material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the department, the ((~~United States Nuclear Regulatory Commission, any~~)) NRC or an agreement state ((~~or any licensing state~~)), or to ((~~any~~)) a person otherwise authorized to receive such material by the federal government or ((~~any~~)) an agency thereof, the department, ((~~any~~)) or an agreement state ((~~or any licensing state~~)); or

(e) As otherwise authorized by the department in writing.

(3) Before transferring radioactive material to a specific licensee of the department, the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or a licensing state~~)), or to a general licensee who is required to register with the department, the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or a licensing state~~)) prior to receipt of the radioactive material, the licensee transferring the material ((~~shall~~)) must verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by subsection (3) of this section are acceptable:

(a) The transferor may obtain for possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may obtain for possession a written certification from the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) For emergency shipments the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date: Provided, That the oral certification is confirmed in writing within ten days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the department, the ((~~United States Nuclear Regulatory Commission,~~)) NRC or the licensing agency of an agreement state ((~~or a licensing state~~)) as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in subsection (4) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the department, the ((~~United States Nuclear Regulatory Commission,~~)) NRC or the licensing agency of an agreement state ((~~or a licensing state~~)) that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material ((~~shall~~)) must be in accordance with the provisions of WAC 246-232-090.

(6) The requirements of subsection (4) of this section notwithstanding, no verification is required when returning used, unused or decayed sources of radiation to the original manufacturer, (e.g., industrial radiography sources, high dose-rate afterloader sources, teletherapy sources, portable moisture/density gauge sources, fixed gauge sources, and Mo-99/Tc-99m or Rb-82/Sr-82 generators).

AMENDATORY SECTION (Amending WSR 01-02-068, filed 12/29/00, effective 1/29/01)

WAC 246-232-130 Schedule C, exempt concentrations. (See WAC 246-232-010(1).)

Element (atomic number)	((~~Isotope~~)) Radionuclide	Column I Gas concentration $\mu Ci/ml$[1]	Column II Liquid and solid concentration $\mu Ci/ml$[2]
Antimony (51)	Sb-122		$3x10^{-4}$
	Sb-124		$2x10^{-4}$
	Sb-125		$1x10^{-3}$
Argon (18)	Ar-37	$1x10^{-3}$	
	Ar-41	$4x10^{-7}$	
Arsenic (33)	As-73		$5x10^{-3}$
	As-74		$5x10^{-4}$
	As-76		$2x10^{-4}$
	As-77		$8x10^{-4}$
Barium (56)	Ba-131		$2x10^{-3}$
	Ba-140		$3x10^{-4}$
Beryllium (4)	Be-7		$2x10^{-2}$
Bismuth (83)	Bi-206		$4x10^{-4}$
Bromine (35)	Br-82	$4x10^{-7}$	$3x10^{-3}$

Element (atomic number)	((~~Isotope~~)) Radionuclide	Column I Gas concentration µCi/ml[1]	Column II Liquid and solid concentration µCi/ml[2]
Cadmium (48)	Cd-109		$2x10^{-3}$
	Cd-115m		$3x10^{-4}$
	Cd-115		$3x10^{-4}$
Calcium (20)	Ca-45		$9x10^{-5}$
	Ca-47		$5x10^{-4}$
Carbon (6)	C-14	$1x10^{-6}$	$8x10^{-3}$
Cerium (58)	Ce-141		$9x10^{-4}$
	Ce-143		$4x10^{-4}$
	Ce-144		$1x10^{-4}$
Cesium (55)	Cs-131		$2x10^{-2}$
	Cs-134m		$6x10^{-2}$
	Cs-134		$9x10^{-5}$
Chlorine (17)	Cl-38	$9x10^{-7}$	$4x10^{-3}$
Chromium (24)	Cr-51		$2x10^{-2}$
Cobalt (27)	Co-57		$5x10^{-3}$
	Co-58		$1x10^{-3}$
	Co-60		$5x10^{-4}$
Copper (29)	Cu-64		$3x10^{-3}$
Dysprosium (66)	Dy-165		$4x10^{-3}$
	Dy-166		$4x10^{-4}$
Erbium (68)	Er-169		$9x10^{-4}$
	Er-171		$1x10^{-3}$
Europium (63)	Eu-152 (9.2 h)		$6x10^{-4}$
	Eu-155		$2x10^{-3}$
Fluorine (9)	F-18	$2x10^{-6}$	$8x10^{-3}$
Gadolinium (64)	Gd-153		$2x10^{-3}$
	Gd-159		$8x10^{-4}$
Gallium (31)	Ga-72		$4x10^{-4}$
Germanium (32)	Ge-71		$2x10^{-2}$
Gold (79)	Au-196		$2x10^{-3}$
	Au-198		$5x10^{-4}$
	Au-199		$2x10^{-3}$
Hafnium (72)	Hf-181		$7x10^{-4}$
Hydrogen (1)	H-3	$5x10^{-6}$	$3x10^{-2}$
Indium (49)	In-113m		$1x10^{-2}$
	In-114m		$2x10^{-4}$
Iodine (53)	I-125	$3x10^{-9}$	$2x10^{-5}$
	I-126	$3x10^{-9}$	$2x10^{-5}$
	I-131	$3x10^{-9}$	$2x10^{-5}$
	I-132	$8x10^{-8}$	$6x10^{-4}$
	I-133	$1x10^{-8}$	$7x10^{-5}$
	I-134	$2x10^{-7}$	$1x10^{-3}$
Iridium (77)	Ir-190		$2x10^{-3}$
	Ir-192		$4x10^{-4}$
	Ir-194		$3x10^{-4}$
Iron (26)	Fe-55		$8x10^{-3}$
	Fe-59		$6x10^{-4}$
Krypton (36)	Kr-85m	$1x10^{-6}$	
	Kr-85		$3x10^{-6}$
Lanthanum (57)	La-140		$2x10^{-4}$
Lead (82)	Pb-203		$4x10^{-3}$
Lutetium (71)	Lu-177		$1x10^{-3}$
Manganese (25)	Mn-52		$3x10^{-4}$
	Mn-54		$1x10^{-3}$
	Mn-56		$1x10^{-3}$
Mercury (80)	Hg-197m		$2x10^{-3}$
	Hg-197		$3x10^{-3}$
	Hg-203		$2x10^{-4}$
Molybdenum (42)	Mo-99		$2x10^{-3}$
Neodymium (60)	And-147		$6x10^{-4}$
	And-149		$3x10^{-3}$
Nickel (28)	Ni-65		$1x10^{-3}$
Niobium (Columbium)(41)	Nb-95		$1x10^{-3}$
	Nb-97		$9x10^{-3}$
Osmium (76)	So-185		$7x10^{-4}$
	So-191m		$3x10^{-2}$
	So-191		$2x10^{-3}$
	So-193		$6x10^{-4}$
Palladium (46)	Pd-103		$3x10^{-3}$
	Pd-109		$9x10^{-4}$
Phosphorus (15)	P-32		$2x10^{-4}$
Platinum (78)	Pt-191		$1x10^{-3}$
	Pt-193m		$1x10^{-2}$
	Pt-197m		$1x10^{-2}$
	Pt-197		$1x10^{-3}$
Potassium (19)	K-42		$3x10^{-3}$
Praseodymium (59)	Pr-142		$3x10^{-4}$
	Pr-143		$5x10^{-4}$
Promethium (61)	Pm-147		$2x10^{-3}$
	Pm-149		$4x10^{-4}$
Radium (88)	Ra-226		$1x10^{-7}$
	Ra-228		$3x10^{-7}$

Element (atomic number)	((~~Isotope~~)) Radionuclide	Column I Gas concentration μCi/ml[1]	Column II Liquid and solid concentration μCi/ml[2]
Rhenium (75)	Re-183		$6x10^{-3}$
	Re-186		$9x10^{-4}$
	Re-188		$6x10^{-4}$
Rhodium (45)	Rh-103m		$1x10^{-1}$
	Rh-105		$1x10^{-3}$
Rubidium (37)	Rb-86		$7x10^{-4}$
Ruthenium (44)	Ru-97		$4x10^{-3}$
	Ru-103		$8x10^{-4}$
	Ru-105		$1x10^{-3}$
	Ru-106		$1x10^{-4}$
Samarium (62)	Sm-153		$8x10^{-4}$
Scandium (21)	Sc-46		$4x10^{-4}$
	Sc-47		$9x10^{-4}$
	Sc-48		$3x10^{-4}$
Selenium (34)	Se-75		$3x10^{-3}$
Silicon (14)	Is-31		$9x10^{-3}$
Silver (47)	Ag-105		$1x10^{-3}$
	Ag-110m		$3x10^{-4}$
	Ag-111		$4x10^{-4}$
Sodium (11)	Na-24		$2x10^{-3}$
Strontium (38)	Sr-85		$1x10^{-3}$
	Sr-89		$1x10^{-4}$
	Sr-91		$7x10^{-4}$
	Sr-92		$7x10^{-4}$
Sulfur (16)	S-35	$9x10^{-8}$	$6x10^{-4}$
Tantalum (73)	Ta-182		$4x10^{-4}$
Technetium (43)	Tc-96m		$1x10^{-1}$
	Tc-96		$1x10^{-3}$
Tellurium (52)	Te-125m		$2x10^{-3}$
	Te-127m		$6x10^{-4}$
	Te-127		$3x10^{-3}$
	Te-129m		$3x10^{-4}$
	Te-131m		$6x10^{-4}$
	Te-132		$3x10^{-4}$
Terbium (65)	Tb-160		$4x10^{-4}$
Thallium (81)	Tl-200		$4x10^{-3}$
	Tl-201		$3x10^{-3}$
	Tl-202		$1x10^{-3}$
	Tl-204		$1x10^{-3}$
Thulium (69)	Tm-170		$5x10^{-4}$
	Tm-171		$5x10^{-3}$
Tin (50)	Sn-113		$9x10^{-4}$
	Sn-125		$2x10^{-4}$
Tungsten (Wolfram) (74)	W-181		$4x10^{-3}$
	W-187		$7x10^{-4}$
Vanadium (23)	V-48		$3x10^{-4}$
Xenon (54)	Xe-131m	$4x10^{-6}$	
	Xe-133	$3x10^{-6}$	
	Xe-135	$1x10^{-6}$	
Ytterbium (70)	Yb-175		$1x10^{-3}$
Yttrium (39)	Y-90		$2x10^{-4}$
	Y-91m		$3x10^{-2}$
	Y-91		$3x10^{-4}$
	Y-92		$6x10^{-4}$
	Y-93		$3x10^{-4}$
Zinc (30)	Zn-65		$1x10^{-3}$
	Zn-69m		$7x10^{-4}$
	Zn-69		$2x10^{-2}$
Zirconium (40)	Zr-95		$6x10^{-4}$
	Zr-97		$2x10^{-4}$
Beta ((~~and/~~))or gamma emitting radioactive material not listed above with half-life less than 3 years		$1x10^{-10}$	$1x10^{-6}$

Notes: [1] Values are given in Column I only for those materials normally used as gases

[2] μCi/gm for solids

Note 1: Many ((~~radioisotopes disintegrate~~)) radionuclides decay into ((~~isotopes~~)) nuclides which are also radioactive. In expressing the concentrations in Schedule C the activity stated is that of the parent ((~~isotope~~)) nuclide and takes into account the daughters.

Note 2: For purposes of WAC 246-232-010(1) where there is involved a combination of ((~~isotopes~~)) nuclides, the limit for the combination should be derived as follows: Determine for each ((~~isotope~~)) nuclide in the product the ratio between the concentration present in the product and the exempt concentration established in Schedule C for the specific ((~~isotope~~)) nuclide when not in combination. The sum of such ratios may not exceed "1" (i.e., unity).

Example:

$$\frac{\text{Concentration of ((Isotope)) Nuclide A in Product}}{\text{Exempt concentration of ((Isotope)) Nuclide A}} + \frac{\text{Concentration of ((Isotope)) Nuclide B in Product}}{\text{Exempt concentration of ((Isotope)) Nuclide B}} \leq 1$$

Note 3: For the purpose of determining concentration in a product or device, the total quantity of radioactive material present is divided by only that weight or volume of the discrete part or component throughout which the radioactive material is relatively uniformly distributed. If the weight or volume of this part or component cannot be determined then the product or device should be evaluated on the basis of the total quantity of radioactive material present.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-232-013	Exemption of certain resins containing scandium-46 and designed for sand consolidation in oil wells.

AMENDATORY SECTION (Amending WSR 04-04-055, filed 1/30/04, effective 3/1/04)

WAC 246-233-001 Purpose and scope. This chapter establishes general licenses for the possession and use of radioactive material ((~~contained in certain items~~)) and a general license for ownership of radioactive material. Chapter 246-232 WAC also contains provisions applicable to the general licenses established in this part.

AMENDATORY SECTION (Amending WSR 04-04-055, filed 1/30/04, effective 3/1/04)

WAC 246-233-005 Ownership of radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of this chapter, ((~~this~~)) a general ((~~license does~~)) licensee under this section is not ((~~authorize the~~)) authorized to manufacture, ((~~production~~)) produce, transfer, ((~~receipt~~)) receive, ((~~possession or~~)) possess, use ((~~of~~)), import or export radioactive material, except as authorized by a specific license.

AMENDATORY SECTION (Amending WSR 98-13-037, filed 6/8/98, effective 7/9/98)

WAC 246-233-010 General licenses—Source material. (1) A general license is hereby issued authorizing use, possession, and transfer of not more than fifteen pounds of source material at any one time by persons in the following categories:

(a) Pharmacists using the source material solely for the preparation of medicinal compounds;

(b) Physicians using the source material for medicinal purposes;

(c) Persons receiving possession of source material from pharmacists and physicians in the form of medicinals or drugs;

(d) Commercial and industrial firms, and research, educational, and medical institutions, and state and local government agencies for research, development, educational, operational, or commercial purposes: And provided, That no such person shall, pursuant to this general license, receive more than a total of one hundred fifty pounds of source material in any one calendar year.

(2) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in subsection (1) of this section are exempt from the provisions of chapters 246-221 and 246-222 WAC to the extent that such receipt, possession, use, or transfer is within the terms of such general license: Provided, however, That this exemption shall not be deemed to apply to any such person who is also in possession of source material under a specific license issued pursuant to chapter 246-235 WAC.

(3) A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize any person to receive, possess, use, or transfer source material.

(4) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of ((~~paragraphs (4)~~))(b), (c), (d), and (e) of this ((~~section~~)) subsection, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license in ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to WAC 246-235-091 or in accordance with a specific license issued to the manufacturer by the ((~~United States Nuclear Regulatory Commission~~)) NRC or an agreement state which authorizes manufacture of the products or devices for distribution to persons generally licensed by the ((~~United States Nuclear Regulatory Commission~~)) NRC or an agreement state.

(c)(i) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection shall file department form RHF-20 "Registration certificate - Use of depleted uranium under general license," with the department. The form shall be submitted within thirty days after the first receipt or acquisition of such depleted uranium. The registrant shall furnish on department form RHF-20 the following information and such other information as may be required by that form:

(A) Name and address of the registrant;

(B) A statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(C) Name and((~~/or~~)) title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in ((~~item (4)~~))(c)(i)(B) of this ((~~section~~)) subsection.

(ii) The registrant possessing or using depleted uranium under the general license established by ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection shall report in writing to the department any changes in information previously furnished on the "Registration certificate - Use of depleted uranium

under general license." The report shall be submitted within thirty days after the effective date of such change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection:

(i) Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium.

(ii) Shall not abandon such depleted uranium.

(iii) Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provision of chapter 246-232 WAC. In the case where the transferee receives the depleted uranium pursuant to the general license established by ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection the transferor shall furnish the transferee a copy of this regulation and a copy of department form RHF-20.

In the case where the transferee receives the depleted uranium pursuant to a general license contained in the ((~~United States Nuclear Regulatory Commission's~~)) NRC's or agreement state's regulation equivalent to ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection the transferor shall furnish the transferee a copy of this regulation and a copy of department form RHF-20 accompanied by a note explaining that use of the product or device is regulated by the ((~~United States Nuclear Regulatory Commission~~)) NRC or agreement state under requirements substantially the same as those in this regulation.

(iv) Shall maintain and make available to the department upon request the name and address of the person receiving the depleted uranium pursuant to such transfer.

(v) Shall not export such depleted uranium except in accordance with a license issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC pursuant to 10 C.F.R. Part 110.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by ((~~paragraph (4)~~))(a) of this ((~~section~~)) subsection is exempt from the requirements of chapters 246-221 and 246-222 WAC of these regulations with respect to the depleted uranium covered by that general license.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-233-012 General license for certain items and self-luminous products containing radium-226. (1) A general license shall be issued to any person to acquire, receive, possess, use, or transfer, in accordance with the provisions of subsections (2), (3), and (4) of this section, radium-226 contained in:

(a) Antiquities originally intended for use by the general public. For the purposes of this subsection, antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(b) Intact timepieces containing greater than 0.037 megabecquerel (1 microcurie), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(c) Luminous items installed in air, marine, or land vehicles.

(d) All other luminous products, provided that no more than one hundred items are used or stored at the same location at any one time.

(e) Small radium sources containing no more than 0.037 megabecquerel (1 microcurie) of radium-226. For the purposes of this subsection, "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators, or as designated by the department ((~~of health~~)).

(2) Persons who acquire, receive, possess, use, or transfer radioactive material((~~s~~)) under the general license issued in subsection (1) of this section are exempt from the provisions of chapters 246-221 and 246-222 WAC to the extent that such receipt, possession, use, or transfer is within the terms of such general license. This exemption shall not apply to any person who is also in possession of radioactive material((~~s~~)) under a specific license issued under chapter 246-235 WAC.

(3) Any person who acquires, receives, possesses, uses, or transfers ((~~by-product~~)) radioactive material in accordance with the general license in subsection (1) of this section:

(a) Shall notify the department should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the department within thirty days.

(b) Shall not abandon products containing radium-226. The product, and any radioactive material from the product, may only be transferred or disposed ((~~of~~)) in accordance with chapter 246-232 WAC, or as otherwise approved by the department.

(c) Shall not export products containing radium-226 except in accordance with chapter 246-231 WAC.

(d) Shall dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under chapter 246-235 WAC, or equivalent regulations of an agreement state, or as otherwise approved by the NRC.

(e) Shall respond to written requests from the department to provide information relating to the general license within thirty calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing a written justification for the request.

(4) The general license in subsection (1) of this section does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-233-015 Certain devices and equipment. A general license is hereby issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the ((~~United States Nuclear Regulatory Commission~~)) NRC for use pursuant to Section 31.3 of 10 C.F.R. Part 31. This general license is subject to the provisions of WAC 246-220-020, 246-220-030, 246-220-040, 246-220-050, 246-220-060, 246-220-070, chapters 246-232, 246-221** and 246-222 WAC.

(1) *Static elimination device.* Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 megabecquerels (500 microcuries) of Polonium-210 per device.

(2) *Ion generating tube.* Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 megabecquerels (500 microcuries) of Polonium-210 per device or a total of not more than ((~~18.5 megabecquerels~~)) 1.85 gigabecquerels (50 millicuries) of Hydrogen-3 (tritium) per device.

** Attention is directed particularly to the provisions of chapter 246-221 WAC which relate to the labeling of containers.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-233-020 ((~~General license—~~))Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere. (1) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and federal, state, or local government agencies to ((~~own,~~)) acquire, receive, possess, use or transfer, in accordance with the provisions of subsections (2), (3), and (4) of this section, radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(2) The general license in subsection (1) of this section applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued by the department pursuant to WAC 246-235-093 or in accordance with an equivalent specific license issued by the ((~~Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or a licensing state~~)), which authorizes distribution or transfer of devices to persons generally licensed by the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or licensing state~~))**. The devices ((~~shall~~)) must have been received from one of the specific licensees described in this subsection or through a transfer made under subsection (3)(h) of this section.

**Note: Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in Section 179.21 of 21 C.F.R. Part 179.

(3) Any person who ((~~owns,~~)) acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in subsection (1) of this section:

(a) Shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by such labels;

(b) Shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at such other intervals as are specified in the label, however:

(i) Devices containing only krypton need not be tested for leakage of radioactive material; and

(ii) Devices containing only tritium or not more than 3.7 megabecquerels (100 microcuries) of other beta ((~~and/~~))or gamma emitting material or 370 kilobecquerels (10 microcuries) of alpha emitting material need not be tested for any purpose. Devices held in storage in the original shipping container prior to initial installation need not be tested until immediately prior to use;

(c) Shall assure that the tests required by (b) of this subsection and other testing, installing, servicing, and removing from installation involving the radioactive material((~~s~~)), its shielding or containment, are performed:

(i) In accordance with the instructions provided by the labels; or

(ii) By a person holding a specific license ((~~from~~)) issued by the department ((~~or from~~)), the ((~~United States Nuclear Regulatory Commission~~)) NRC or ((~~from any~~)) an agreement state ((~~or from a licensing state~~)) to perform such activities;

(d) Shall maintain records showing compliance with the requirements of (b) and (c) of this subsection. The records ((~~shall~~)) must show the results of tests. The records also ((~~shall~~)) must show the dates of performance and the names of persons performing, testing, installing, servicing, and removing from installation ((~~concerning the~~)) radioactive material((~~,~~)) and its shielding or containment. Records of tests for leakage of radioactive material required by (b) of this subsection ((~~shall~~)) must be ((~~maintained~~)) retained for three years after the next required leak test is performed or the sealed source is transferred or disposed. Records of tests of the on/off mechanism and indicator required by (b) of this subsection ((~~shall~~)) must be ((~~maintained~~)) retained for three years after the next required test of the on/off mechanism and indicator is performed or the sealed source is transferred or disposed. Records of other testing, installation, servicing, and

removal from installation required by (c) of this subsection ((~~shall~~)) must be ((~~maintained~~)) retained for a period of three years from the date of the recorded event or until the device is transferred or disposed;

(e) ((~~Upon the occurrence of~~)) Shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of, or damage to, the shielding of the radioactive material or the on/off mechanism or indicator, or upon the detection of 185 becquerels (0.005 microcurie((~~s~~))) or more removable radioactive material((~~, shall immediately suspend operation of the device~~)). The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license ((~~from~~)) issued by the department, the ((~~United States Nuclear Regulatory Commission,~~)) NRC or ((~~from~~)) an agreement state ((~~or a licensing state~~)) to repair such devices, or disposed by transfer to a person authorized by a specific license to receive the radioactive material contained in the device ((~~and,~~)) or as otherwise approved by the department. Within thirty days, ((~~furnish to~~)) the licensee must send the department a written report containing a brief description of the event and the remedial action taken; and, in the case of detection of 185 becquerels (0.005 microcurie((~~s~~))) or more of removable radioactive material, or failure of, or damage to, a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use (see WAC 246-246-020);

(f)(i) Shall not abandon the device containing radioactive material;

(ii) Shall not export the device containing radioactive material except in accordance with the provisions of 10 C.F.R. 110;

(g) Except as provided in (h) of this subsection, ((~~shall~~)) must transfer or dispose of the device containing radioactive material only by transfer to a person ((~~holding~~)) with a specific license ((~~of~~)) issued by the department, the ((~~United States Nuclear Regulatory Commission~~)) NRC, or an agreement state, ((~~or a licensing state whose specific license~~)) which authorizes the person to receive the device ((~~and~~)). Within thirty days after export or transfer of a device to a specific licensee ((~~shall furnish~~)), the general licensee must send a report to the department ((~~a report~~)), containing ((~~identification~~)) the identity of the device ((~~by manufacturer's~~)) and manufacturer (or initial ((~~transferor's) name~~)) transferor), model number, ((~~and~~)) serial number, the nuclide(s), and activity of radioactive material contained in the devices; the name, address, and license number of the person receiving the device, and the date of transfer. Prior written approval from the department is required before transferring the device to any other specific licensee not specifically identified in this subsection; however, a specific licensee may transfer a device for possession and use under its own specific license without prior approval, if the specific licensee:

(i) Verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(ii) Removes, alters, covers, or clearly and unambiguously augments the existing label, so that the device is labeled in compliance with WAC 246-221-120(9); however, the manufacturer, model number, and serial number must be retained;

(iii) Obtains the manufacturer's or initial transferor's maintenance information applicable under the specific license (such as leak test procedures); and

(iv) Reports the transfer under WAC 246-233-020 (3)(g).

(h) Shall transfer the device to another general licensee only if:

(i) ((~~Where~~)) The device remains in use at a particular location. In such case, the transferor shall give the transferee a copy of this section, a copy of WAC 246-221-240, 246-221-250, 246-232-050, and 246-232-060, and any safety documents identified ((~~in~~)) by the label of the device ((~~and~~)). Within thirty days of the transfer, the transferor shall report to the department: The ((~~manufacturer's~~)) name of the manufacturer (or ((~~transferor's) name~~)) initial transferor), model number, ((~~and~~)) serial number ((~~of device~~)), and the source, nuclide(s), and original activity contained in the device(s) transferred((~~,~~)); the transferee's name and mailing address for the location of use, and the name, title, and phone number of the responsible individual identified by the transferee in accordance with (j) of this subsection to have knowledge of and authority to take action((~~s~~)) to ensure compliance with the appropriate regulations and requirements; or

(ii) ((~~Where~~)) The device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;

(i) Shall comply with the provisions of WAC 246-221-240 and 246-221-250 for reporting radiation incidents, or theft or loss of ((~~licensed~~)) radioactive material, but shall be exempt from ((~~the~~)) other requirements of chapters 246-221 and 246-222 WAC;

(j) Shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any ((~~of its~~)) responsibility in this regard;

(k)(i) Shall register, in accordance with (k)(ii) and (iii) of this subsection, devices containing at least 370 megabecquerels (10 millicuries) of Cesium-137, 3.7 megabecquerels (0.1 millicuries) of Strontium-90, 3.7 megabecquerels (100 microcuries) of Radium-226, 37 megabecquerels (1 millicurie) of Cobalt-60, or 37 megabecquerels (1 millicurie) of Americium-241, ((~~3.7 megabecquerels (0.1 millicurie) of Radium-226,~~)) or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address for a location of use, as described under (k)(iii)(D) of this subsection, represents a separate general licensee and requires a separate registration and fee;

(ii) If in possession of a device meeting the criteria of (k)(i) of this subsection, shall register these devices annually with the department and shall pay the fee required by WAC 246-254-090. Registration must be done by verifying, correcting, ((~~and/~~))or adding to the information provided in a

request for registration received from the department. The registration information must be submitted to the department within thirty days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of (k)(i) of this subsection is subject to the bankruptcy notification requirement in WAC 246-232-050;

(iii) ((~~In~~)) When registering devices, the general licensee shall ((~~furnish~~)) provide the following information and any other information specifically requested by the department:

(A) Name and mailing address of the general licensee;

(B) Information about each device: The manufacturer (or initial transferor), model number, serial number, the radionuclide and activity (as indicated on the label);

(C) Name, title, and telephone number of the responsible person designated as a representative of the general licensee under (j) of this subsection;

(D) Address or location at which the device(s) are used ((~~and/~~))or stored. For portable devices, the address of the primary place of storage;

(E) Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and ((~~checking~~)) verification of label information;

(F) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license;

(iv) ((~~Persons generally~~)) WAC 246-232-040, Reciprocal recognition of licenses describes how persons licensed by the ((~~U.S. Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~with respect to devices meeting the criteria in (k)(i) of this subsection are not subject to registration requirements if the devices are used in areas subject to Washington state jurisdiction for a period less than one hundred eighty days in any calendar year. The department will not request registration information from such licensees;~~)) may obtain approval to work in Washington.

(l) Shall report changes to the mailing address for the location of use (including change in name of general licensee) to the department within thirty days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage;

(m) Shall not hold devices that are not in use for longer than two years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by subsection (3)(b) of this ((~~subsection~~)) section need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby;

(n) Must respond to written requests from the department to provide information relating to the general license within thirty calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within the same time period, request a longer period to supply the information by providing a written justification for the extension request.

(4) The general license in subsection (1) of this section does not authorize the manufacture, import, or export of devices containing radioactive material. A person must not export the device containing radioactive material except in accordance with NRC's regulations, including 10 C.F.R. Part 110, and in accordance with other applicable federal, state, and local regulations including, but not limited to, the U.S. Department of Commerce, U.S. Department of Revenue, U.S. Department of Transportation, and any other applicable jurisdiction for each export.

(5) The general license provided in this subsection is subject to the provisions of WAC 246-220-020, 246-220-030, 246-220-040, 246-220-060, 246-220-070, 246-220-100, 246-221-240, 246-221-250, 246-232-050, 246-232-060, 246-232-070, 246-232-080, and 246-232-090.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-233-025 General license—Luminous safety devices for aircraft. (1) A general license is hereby issued to own, receive, acquire, possess and use Hydrogen-3 (tritium) or Promethium-147 contained in luminous safety devices for use in aircraft, provided:

(a) Each device contains not more than 370 gigabecquerels (10 curies) of Hydrogen-3 (tritium) or 11.1 gigabecquerels (300 millicuries) of Promethium-147; and

(b) Each device has been manufactured, assembled or imported in accordance with a specific license issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the department or any agreement state to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in Section 32.53 of 10 C.F.R. Part 32 of the regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC.

(2) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in this subsection are exempt from the requirements of chapters 246-221 and 246-222 WAC except that they shall comply with the provisions of WAC 246-221-240 and 246-221-250.

(3) This general license does not authorize the manufacture, assembly, or repair of luminous safety devices containing Hydrogen-3 (tritium) or Promethium-147.

(4) This general license does not authorize the ownership, receipt, acquisition, possession or use of Promethium-147 contained in instrument dials.

(5) This general license is subject to the provisions of WAC 246-220-020, 246-220-030, 246-220-040, 246-220-050, 246-220-060, 246-220-070, 246-220-100, 246-232-050, 246-232-070, 246-232-080, and 246-232-090.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-233-030 General license—Ice detection devices. (1) A general license is hereby issued to own,

receive, acquire, possess, use and transfer Strontium-90 contained in ice detection devices, provided each device contains not more than 185 megabecquerels (50 microcuries) of Strontium-90 and each device has been manufactured or imported in accordance with a specific license issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC or each device has been manufactured in accordance with the specifications contained in a specific license issued by the department or any agreement state to the manufacturer of such device pursuant to licensing requirements equivalent to those in Section 32.61 of 10 C.F.R. Part 32 of the regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC.

(2) Persons who own, receive, acquire, possess, use or transfer Strontium-90 contained in ice detection devices pursuant to the general license in (a) of this subsection:

(a) Shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license ((~~from~~)) issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC or an agreement state to manufacture or service such devices; or shall dispose of the device pursuant to the provisions of these regulations;

(b) Shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(c) Are exempt from the requirements of chapters 246-221 and 246-222 WAC except that such persons shall comply with the provisions of WAC 246-221-170, 246-221-240, and 246-221-250.

(3) This general license does not authorize the manufacture, assembly, disassembly or repair of Strontium-90 sources in ice detection devices.

(4) This general license is subject to the provisions of WAC 246-220-020, 246-220-030, 246-220-040, 246-220-060, 246-220-070, 246-220-100, 246-232-050, 246-232-070, 246-232-080, and 246-232-090.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-233-035 General license—Calibration and reference sources. (1) A general license is hereby issued to those persons listed below to own, receive, acquire, possess, use and transfer, in accordance with the provisions of subsections (4) and (5) of this section, Americium-241 in the form of calibration or reference sources:

(a) Any person who holds a specific license issued by the department which authorizes that person to receive, possess, use and transfer radioactive material; or

(b) Any person who holds a specific license issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC which authorizes that person to receive, possess, use and transfer special nuclear material.

(2) A general license is hereby issued to own, receive, possess, use and transfer Plutonium in the form of calibration or reference sources in accordance with the provisions of subsections (4) and (5) of this section to any person who holds a specific license issued by the department or the NRC which authorizes that person to receive, possess, use and transfer radioactive material.

(3) A general license is hereby issued to own, receive, possess, use and transfer Radium-226 in the form of calibration or reference sources in accordance with the provisions of subsections (4) and (5) of this section to any person who holds a specific license issued by the department or the NRC which authorizes that person to receive, possess, use and transfer radioactive material.

(4) The general licenses in subsections (1), (2) and (3) of this section apply only to calibration or reference sources which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the ((~~United States Nuclear Regulatory Commission~~)) NRC pursuant to Section 32.57 of 10 C.F.R. Part 32 or Section 70.39 of 10 C.F.R. Part 70 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the department or any agreement state ((~~or licensing state~~)) pursuant to licensing requirements equivalent to those contained in Section 32.57 of 10 C.F.R. Part 32 or Section 70.39 of 10 C.F.R. Part 70 of the regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC.

(5) The general licenses provided in subsections (1), (2) and (3) of this section are subject to the provisions of WAC 246-220-020, 246-220-030, 246-220-040, 246-220-060, 246-220-070, 246-220-100, 246-232-050, 246-232-070, 246-232-080, 246-232-090, chapters 246-221 and 246-222 WAC.

In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to these general licenses:

(a) Shall not possess at any one time, at any one location of storage or use, more than 185 kilobecquerels (5 microcuries) of Americium-241 and 185 kilobecquerels (5 microcuries) of plutonium and 185 kilobecquerels (5 microcuries) of Radium-226 in such sources;

(b) Shall not receive, possess, use or transfer such source unless the source, or the storage container, bears a label which includes one of the following statements or a substantially similar statement which contains the information called for in the following statement:

(i) The receipt, possession, use and transfer of this source, Model . . . . . , Serial No. . . . . , are subject to a general license and the regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC or of a state with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.
CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS (AMERICIUM-241). (PLUTONIUM)*. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE

. . . . . .
Name of manufacturer or importer

*Note: Showing only the name of the appropriate material.

(ii) The receipt, possession, use and transfer of this source, Model . . . . . , Serial No. . . . . , are subject to a general license and the regulations of ((~~any licensing state~~)) an agreement state or NRC. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS RADIUM-226. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE

. . . . . .

Name of manufacturer or importer

(c) Shall not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license ((~~from~~)) issued by the department, the ((~~United States Nuclear Regulatory Commission~~)) NRC, or an agreement state ((~~or licensing state~~)) to receive the source;

(d) Shall store such source, except when the source is being used, in a closed container adequately designed and constructed to contain Americium-241, Plutonium, or Radium-226/Radon-222 which might otherwise escape during storage; and

(e) Shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(6) These general licenses do not authorize the manufacture of calibration or reference sources containing Americium-241, Plutonium, or Radium-226.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-233-040 General license for use of radioactive material for certain *in-vitro* clinical or laboratory testing.* (1) A general license is hereby issued to any physician, veterinarian, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of subsections (2), (3), (4), (5), and (6) of this section the following radioactive material((~~s~~)) in prepackaged units:

(a) Iodine-125, in units not exceeding 370 kilobecquerels (10 microcuries) each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(b) Iodine-131, in units not exceeding 370 kilobecquerels (10 microcuries) each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(c) Carbon-14, in units not exceeding 370 kilobecquerels (10 microcuries) each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(d) Hydrogen-3 (tritium), in units not exceeding 1.85 megabecquerels (50 microcuries) each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(e) Iron-59, in units not exceeding 740 kilobecquerels (20 microcuries) each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(f) Cobalt-57, in units not exceeding 370 kilobecquerels (10 microcuries) each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(g) Selenium-75, in units not to exceed 370 kilobecquerels (10 microcuries) each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(h) Mock Iodine-125 reference or calibration sources, in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of Iodine-129 and 185 becquerels (0.005 microcurie) of Americium-241 each for use in *in-vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

*Note: The new drug provisions of the Federal Food, Drug and Cosmetic Act also govern the availability and use of any specific diagnostic drugs in interstate commerce.

(2) No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by subsection (1) of this section until that person has received a validated copy of department Form RHF-15 "Certificate((-))in-vitro testing with radioactive material under general license." Annual validation requires annual resubmittal of revised department Form RHF-15 and submittal of the annual fee to the department. The physician, veterinarian, clinical laboratory or hospital shall furnish on department Form RHF-15 the following information and such other information as may be required by that form:

(a) Name and address of the physician, veterinarian, clinical laboratory or hospital;

(b) The location of use; and

(c) A statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out *in-vitro* clinical or laboratory tests with radioactive material as authorized under the general license in subsection (1) of this section and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material.

(3) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by subsection (1) of this section shall comply with the following:

(a) The general licensee shall not possess at any one time, pursuant to the general license in subsection (1) of this section at any one location of storage or use, a total amount of Iodine-125, Iodine-131, Selenium-75, Iron-59, ((~~and/~~))or Cobalt-57 in excess of 7.4 megabecquerels (200 microcuries).

(b) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(c) The general licensee shall use the radioactive material only for the uses authorized by subsection (1) of this section.

(d) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the department, the ((~~United States Nuclear Regulatory Commission, any~~)) NRC, or an agreement state ((~~or licensing state~~)), nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier.

(e) The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in subsection (1)(h) of this section as required by WAC 246-221-170.

(4) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to subsection (1) of this section:

(a) Except as prepackaged units which are labeled in accordance with the provision of an applicable specific license issued pursuant to WAC 246-235-097 or in accordance with the provisions of a specific license issued by the ((~~United States Nuclear Regulatory Commission~~)) NRC, or ((~~any~~)) an agreement state ((~~or licensing state~~)) which authorizes the manufacture and distribution of Iodine-125, Iodine-131, Carbon-14, Hydrogen-3 (tritium), Iron-59, Selenium-75, Cobalt-57, or Mock Iodine-125 to persons generally licensed under this subsection or its equivalent; and

(b) Unless one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for *in-vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the ((~~regulations~~)) rules and a general license of an agreement state or the ((~~United States Nuclear Regulatory Commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority~~)) NRC.

. . . . . .
Name of manufacturer

This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for *in-vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the ((~~regulations~~)) rules and a general license of ((~~a licensing~~)) an agreement state or the NRC.

. . . . . .
Name of manufacturer

(5) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license of subsection (1) of this section shall report in writing to the department, any changes in the information previously furnished in the "Certificate((~~—~~))in-vitro testing with radioactive material under general license," department Form RHF-15. The report shall be furnished within thirty days after the effective date of such change.

(6) This general license is subject to the provisions of WAC 246-220-020, 246-220-030, 246-220-040, 246-220-060, 246-220-070, 246-220-090 and 246-220-100. In addition, any person using radioactive material pursuant to the general license of subsection (1) of this section is exempt from the requirements of chapters 246-221 and 246-222 WAC with respect to radioactive material covered by that general license, except that such persons using the Mock Iodine-125 described in subsection (1)(h) of this section shall comply with the provisions of WAC 246-221-170, 246-221-240, and 246-221-250 and of these ((~~regulations~~)) rules.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-235-010 Filing application for specific licenses. (1) Applications for specific licenses shall be filed on department form RHF-1.

(2) The department may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the department to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the department provided such references are clear and specific.

(6) An application for a specific license to use radioactive materials in the form of a sealed source or in a device that contains the sealed source must:

(a) Identify the source or device by manufacturer and model number; or

(b) Be registered with the ((~~U.S. Nuclear Regulatory Commission~~)) NRC under 10 C.F.R. 32.210; or

(c) For sources not registered with the ((~~U.S.~~)) NRC, provide sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use, relevant operational safety history, and the results of the most recent leak test.

(7) Applications and documents submitted to the department may be made available for public inspection except that the department may withhold any document or part thereof from public inspection if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

AMENDATORY SECTION (Amending WSR 07-03-049, filed 1/12/07, effective 2/12/07)

WAC 246-235-075 Financial assurance and recordkeeping for decommissioning. (1) Each applicant for one of the following licenses shall submit a decommissioning funding plan as described in this section:

(a) A specific license authorizing receipt of radioactive waste for the purpose of volume reduction, repackaging or interim storage.

(b) Receipt of contaminated articles, scrap material, equipment, or clothing to be decontaminated at the licensee's facility.

(c) A specific license authorizing the possession and use of radioactive material of half-life greater than one hundred twenty days and in quantities for unsealed material exceeding 10^3 times and for sealed forms exceeding 10^{10} times the applicable quantities set forth in WAC 246-221-300 Appendix B (for a combination of ((~~isotopes~~)) nuclides the unity rule applies. A decommissioning funding plan will be required if R is greater than 1, where R is defined as the sum of the ratios of the quantity for sealed and unsealed forms of each ((~~isotope~~)) nuclide compared to the applicable value derived from WAC 246-221-300).

(d) A specific license authorizing possession and use of source material in readily dispersible form and in quantities greater than 370 megabecquerels (10 millicuries).

(2) Each decommissioning funding plan shall contain:

(a) A cost estimate for decommissioning facilities impacted by the activities authorized in the specific license.

(b) A description of the method of assuring funds for decommissioning.

(c) A means for adjusting cost estimates and associated funding levels periodically over the life of the facility or facilities.

(d) A description of methods and general procedures for performing facility decontamination, maintaining security, and performing a final radiation survey.

(e) A commitment to clean up accidental spills promptly and to begin decommissioning of the facility or facilities within twelve months of ceasing operation involving radioactive material.

(3) Each cost estimate for decommissioning shall include:

(a) A description of the facility and areas within the facility likely to require decommissioning as a result of routine operation.

(b) Anticipated labor, equipment and material costs.

(c) Anticipated waste volume.

(d) Anticipated packaging, transportation and waste disposal costs.

(e) An assessment of costs associated with an accident involving licensed material.

(4) Each applicant shall submit a certification that financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit of sufficient funds to pay decommissioning costs. Funds shall be deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless ninety days or more prior to the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also require that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within thirty days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the department. Acceptable trustees include an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(iii) The surety method or insurance must remain in effect until the department has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control. The total amount of funds in the external sinking fund shall be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in subsection (4)(b) of this section.

(d) Statement of intent. In the case of state or local government licensees, a statement of intent containing a cost estimate for decommissioning and indicating that funds for decommissioning will be obtained when necessary.

(e) Other methods of financial assurance as approved by the department. The department may approve other financial mechanisms submitted by the applicant or licensee if the alternate method meets, at a minimum, the requirements of 10 C.F.R. 30.35 and associated ((~~U.S. Nuclear Regulatory Commission~~)) NRC guidance.

(5)(a) The applicant or licensee shall submit to the department an initial decommissioning funding plan prior to license issuance and shall submit an updated plan at intervals not to exceed three years.

(b) The applicant or licensee shall incorporate department comments into the decommissioning funding plan including its cost estimate and shall revise its financial surety accordingly.

(c) Applicants shall obtain the appropriate financial assurance as approved by the department prior to receipt of licensed material. The department may issue a new license if the applicant agrees to comply with the decommissioning funding plan as approved. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of this section shall be submitted to the department before receipt of licensed material.

(d) Licensees shall implement the financial assurance requirements within thirty days of receiving department approval of the initial or updated decommissioning funding plan. Licensees shall submit copies of the financial surety within thirty days of securing the surety and annually thereafter.

(6) Each person licensed under this chapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with WAC 246-232-050(2), licensees shall transfer all records described in this subsection to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated by the department. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of:

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used ((~~and/~~))or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or depleted uranium used only for shielding or as penetrators in unused munitions, or radioactive materials having only half-lives of less than sixty-five days, a list contained in a single document and updated every two years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under WAC 246-220-010;

(ii) All areas outside of restricted areas that require documentation under (a) of this subsection;

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under WAC 246-221-230 (8)(a); and

(iv) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in chapter 246-246 WAC or apply for approval for disposal under WAC 246-221-180. Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-235-080 Special requirements for possession and use of medical calibration and reference sources. (1) Leak tests.

(a) Any licensee or registrant who possesses sealed sources as calibration or reference sources ((~~shall~~)) must test for leakage or contamination each sealed source containing radioactive material, other than Hydrogen-3, with a half-life greater than thirty days in any form other than gas ((~~and/or contamination~~)) at least every six months. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, the sealed sources ((~~shall~~)) must not be used until tested. However, leak tests are not required when: The source contains 3.7 megabecquerels (100 microcuries) or less of beta ((~~and/~~))or gamma emitting material or 370 kilobecquerels (10 microcuries) or less of alpha emitting material or the sealed source is stored and is not being used: Provided, a physical inventory of the source and wipe surveys of the storage area or storage container are conducted as required by these rules or license condition.

(b) The leak test ((~~shall~~)) must be capable of detecting the presence of 185 becquerels (0.005 microcurie) of radioactive material on the test sample. The test sample shall be taken from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which contamination might be expected to accumulate. Records of leak test results ((~~shall~~)) must be kept in units of microcuries and maintained for inspection by the department.

(c) If the leak test reveals the presence of 185 becquerels (0.005 microcurie) or more of removable contamination, the licensee or registrant ((~~shall~~)) must immediately withdraw the sealed source from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with chapters 246-235 and 246-221 WAC. The licensee must file a report within five days of the test with the department describing the equipment involved, the test results, and the corrective action taken.

(2) Any licensee or registrant who possesses and uses calibration and reference sources ((~~shall~~)) must:

(a) Follow the radiation safety and handling instructions approved by the department, the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or a licensing state~~)) and furnished by the manufacturer on the label attached to the source, or permanent container thereof, or in the leaflet or brochure that accompanies the source, and maintain the instructions in a legible and conveniently available form; and

(b) Conduct a quarterly or semi-annual physical inventory to account for all sources received and possessed. Records of the inventories ((~~shall~~)) must be maintained for inspection by the department and ((~~shall~~)) must include, at a minimum, the quantities and kinds of radioactive material, location of sources, name of person performing the inventory, and the date of the inventory.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-235-090 Special requirements for specific licenses of broad scope. This section prescribes requirements for the issuance of specific licenses of broad scope for radioactive material ("broad licenses") and certain regulations governing holders of these licenses.*

*Note: No person may introduce radioactive material into a product or material, knowing or having reasons to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by NRC, Washington, D.C. 20555. Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing source material ((~~or~~)), by-product material or radioactive material, whose subsequent possession, use, transfer and disposal by all other persons ((~~who are~~)) exempted from regulatory requirements may be obtained only from the ((~~United States Nuclear Regulatory Commission~~)) NRC, Washington, D.C. 20555.

(1) *The different types of broad licenses are listed below*:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in WAC 246-235-140 Schedule B, for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in WAC 246-235-140 Schedule B, Column I. If two or more radionuclides are possessed, the possession limit for each is determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in WAC 246-235-140 Schedule B, Column I, for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in WAC 246-235-140 Schedule B, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed, is the quantity specified for that radionuclide in WAC 246-235-140 Schedule B, Column II. If two or more radionuclides are possessed, the possession limit is determined for each as follows: For each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in WAC 246-235-140 Schedule B, Column II, for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.

(2) *The department will approve an application for a Type A specific license of broad scope if*:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020.

(b) The applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) The applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) The establishment of a radiation safety committee composed of a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) The establishment of appropriate administrative procedures to assure:

(A) Control of procurement and use of radioactive material;

(B) Completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(C) Review, approval, and recording by the radiation safety committee of safety evaluation of proposed uses prepared in accordance with item (2)(c)(iii)(B) of this section prior to use of the radioactive material.

(3) *The department will approve an application for a Type B specific license of broad scope if*:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020; and

(b) The applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection,

and who is available for advice and assistance on radiation safety matters; and

(ii) The establishment of appropriate administrative procedures to assure:

(A) Control of procurement and use of radioactive material;

(B) Completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(C) Review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with item (3)(b)(ii)(B) of this section prior to use of the radioactive material.

(4) *The department will approve an application for a Type C specific license of broad scope if*:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020.

(b) The applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) A college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) At least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) The applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) *Specific licenses of broad scope are subject to the following conditions*:

(a) Unless specifically authorized by the department, persons licensed under this section shall not:

(i) Conduct tracer studies in the environment involving direct release of radioactive material;

(ii) Receive, acquire, own, possess, use or transfer devices containing 3700 terabecquerels (100,000 curies) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) Conduct activities for which a specific license issued by the department under chapter 246-240 WAC, WAC 246-235-086 or 246-235-091 through 246-235-105 is required; or

(iv) Add or cause the addition of radioactive material to any food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) For each Type A specific license of broad scope radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) For each Type B specific license of broad scope radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) For each Type C specific license of broad scope radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals who satisfy the requirements of subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 98-13-037, filed 6/8/98, effective 7/9/98)

WAC 246-235-091 Manufacture and distribution of industrial products containing depleted uranium under general license. (1) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to WAC 246-233-010(4) or equivalent regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC or an agreement state will be approved if:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020;

(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in one year a radiation dose in excess of ten percent of the limits specified in WAC 246-221-010(1); and

(c) The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of an industrial product or device whose unique benefits are questionable, the department will approve an application for a specific license under this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The department may deny any application for a specific license under this section if the end use(s) of the industrial product or device cannot be reasonably foreseen.

(4) Each person licensed pursuant to subsection (1) of this section shall:

(a) Maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(b) Label or mark each unit to:

(i) Identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(ii) State that the receipt, possession, use and transfer of the product or device are subject to a general license or the

equivalent and the regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC or of an agreement state;

(c) Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted uranium";

(d) Furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in WAC 246-233-010(4) or its equivalent:

(i) A copy of the general license contained in WAC 246-233-010(4) and a copy of department Form RHF-20; or

(ii) A copy of the general license contained in the ((~~United States Nuclear Regulatory Commission's~~)) NRC's or agreement state's regulation equivalent to WAC 246-233-010(4) and a copy of the ((~~United States Nuclear Regulatory Commission's~~)) NRC's or agreement state's certificate, or alternatively, furnish a copy of the general license contained in WAC 246-233-010(4) and a copy of department Form RHF-20 with a note explaining that use of the product or device is regulated by the ((~~United States Nuclear Regulatory Commission~~)) NRC or an agreement state under requirements substantially the same as those in WAC 246-233-010(4).

(e) Report to the department all transfers of industrial products or devices to persons for use under the general license in WAC 246-233-010(4). Such report shall identify each general licensee by name and address, an individual by name ((~~and/~~))or position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under chapter 246-233 WAC during the reporting period, the report shall so indicate;

(f) Provide certain other reports as follows:

(i) Report to the ((~~United States Nuclear Regulatory Commission~~)) NRC all transfers of industrial products or devices to persons for use under the ((~~United States Nuclear Regulatory Commission~~)) NRC general license in Section 40.25 of 10 C.F.R. Part 40;

(ii) Report to the responsible department all transfers of devices manufactured and distributed pursuant to this section for use under a general license in that state's regulations equivalent to WAC 246-233-010(4);

(iii) Such report shall identify each general licensee by name and address, an individual by name ((~~and/~~))or position who may constitute a point of contact between the department and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person;

(iv) If no transfers have been made to ((~~United States Nuclear Regulatory Commission~~)) NRC licensees during the reporting period, this information shall be reported to the ((~~United States Nuclear Regulatory Commission~~)) NRC;

(v) If no transfers have been made to general licensees within a particular agreement state during the reporting period, this information shall be reported to the responsible department; and

(g) Keep records showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in WAC 246-233-010(4) or equivalent regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC or of an agreement state. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

AMENDATORY SECTION (Amending WSR 04-04-055, filed 1/30/04, effective 3/1/04)

WAC 246-235-093 Manufacture, assembly or distribution of devices under general license. (1) An application for a specific license to manufacture or initially transfer or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under WAC 246-233-020 or equivalent regulations of the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or a licensing state~~)) will be approved if:

(a) The applicant satisfies the general requirements of WAC 246-235-020;

(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(i) The device can be safely operated by persons not having training in radiological protection;

(ii) Under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in one year a dose in excess of ten percent of the limits specified in the table in WAC 246-221-010(1); and

(iii) Under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye . . . . . 15 ((~~rems~~)) centigray (15 rem)

Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter . . . . . 200 ((~~rems~~)) centigray (200 rem)

Other organs . . . . . 50 ((~~rems~~)) centigray (50 rem)

(c) Each device bears a durable, legible, clearly visible label or labels approved by the department, which contain in a clearly identified and separate statement:

(i) Instructions and precautions necessary to assure safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) The requirement, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by ((~~isotope~~)) nuclide, quantity of radioactivity, and date of determination of the quantity; and

(iii) The information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(A) The receipt, possession, use and transfer of this device, Model . . . . . , Serial No. . . . . Note*, are subject to a general license or the equivalent, and the regulations of the ((~~United States Nuclear Regulatory Commission~~)) NRC or a state with which the ((~~United States Nuclear Regulatory Commission~~)) NRC has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

. . . . . .

(Name of manufacturer or distributor)*

(B) The receipt, possession, use and transfer of this device, Model . . . . . , Serial No. . . . . Note*, are subject to a general license or the equivalent, and the ((~~regulations~~)) rules of ((~~a licensing~~)) an agreement state. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

. . . . . .

(Name of manufacturer or distributor)*

*Note: The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(d) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the ((~~isotope~~)) nuclide and quantity, the words, "CAUTION - RADIOACTIVE MATERIAL," the radiation symbol described in WAC 246-221-120, and the name of the manufacturer or initial distributor;

(e) Each device meeting the criteria of WAC 246-233-020 (3)(k), bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "CAUTION - RADIOACTIVE MATERIAL," and, if practicable, the radiation symbol described in WAC 246-221-120.

(2) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the department will consider information which includes, but is not limited to:

(a) Primary containment (source capsule);

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical devices or similarly designed and constructed devices.

(3) In the event the applicant desires that the general licensee under WAC 246-233-020, or under equivalent regulations of the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or a licensing state~~)) be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive in one year a radiation dose in excess of ten percent of the limits specified in the table in WAC 246-221-010(1).

(4) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to generally licensed persons ((~~shall, prior to the transfer to the intended user or the initial transfer to an intermediate person, if used:~~)) must provide the information specified in this section to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. If transfer is through an intermediate person, the information much also be provided to the intended user before initial transfer to the intermediate person.

(a) ((~~Furnish to the intended user and to each person to whom a device is transferred as an intermediary, the following~~)) If a device containing radioactive material is to be transferred for use under the general license contained in WAC 246-233-020, the required information must include:

(i) A copy of the general license contained in WAC 246-233-020. If WAC 246-233-020 (3)(b), (c), and (d) or (k) do not apply, those subsections may be omitted;

(ii) A copy of WAC 246-232-050, 246-221-230, 246-221-240, and 246-221-250;

(iii) A list of the services that can only be performed by a specific licensee; and

(iv) Information on acceptable disposal options including estimated costs of disposal; and

(v) An indication that the NRC's policy is to issue high civil penalties for improper disposal.

(b) ((~~Furnish to the intended user~~)) If a device containing radioactive material is to be transferred for use in another jurisdiction ((~~and to each person to whom a device is transferred as an intermediary, the following~~)) under a general license equivalent to WAC 246-233-020, the required information must include:

(i) A copy of the appropriate NRC or an agreement state's regulations, equivalent to WAC 246-233-020, 246-232-050, 246-221-230, 246-221-240, and 246-221-250((~~, contained in the United States Nuclear Regulatory Commission's, agreement state's, or licensing state's regulation~~)). If a copy of ((~~the general license in~~)) WAC 246-233-020, 246-232-050, 246-221-230, 246-221-240, and 246-221-250 is ((~~furnished~~)) provided to ((~~such a person,~~)) a prospective general licensee in lieu of the NRC's or the agreement state's regulations, it shall be accompanied by a note explaining that the use of the device is regulated by the ((~~United States Nuclear Regulatory Commission,~~)) NRC or the agreement state ((~~or licensing state under requirements substantially the same as those in WAC 246-233-020~~)). If certain subsections do not apply to the particular device, those subsections may be omitted;

(ii) A list of the services that can only be performed by a specific licensee;

(iii) Information on acceptable disposal options including estimated cost of disposal;

(iv) The name or title, address, and phone number of the contact at the appropriate NRC or an agreement state regulatory agency from which additional information may be obtained; and

(v) An indication that ((~~U.S. Nuclear Regulatory Commission~~)) NRC policy is to issue high civil penalties for improper disposal;

(c) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to persons generally licensed under WAC 246-233-020 must report to the department all transfers of ((~~such~~)) devices to persons for use under the general license in WAC 246-233-020 and all receipts of devices from persons licensed under WAC 246-233-020.

(i) ((~~Such~~)) Each report ((~~shall~~)) must be clear and legible and contain all of the data required. The required information for transfers to general licensees includes:

(A) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee ((~~shall be submitted along~~)) must be included with information on the actual location of use;

(B) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(C) The date of transfer;

(D) The manufacturer or initial transferor, the type, model number and serial number of the device transferred; and

(E) The ((~~quantity and type~~)) source serial(s), nuclide(s), activity, and date(s) of original activity of radioactive material contained in the device.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use ((~~prior to~~)) before its possession by the user, the report ((~~shall~~)) must include ((~~identification of~~)) the same information for both the intended user and each intermediate person, clearly identify and designate each intermediate person by name, address, contact, and relationship to the intended user.

(iii) For devices received from ((~~persons generally licensed~~)) a general licensee under WAC 246-233-020, the report must include:

(A) The identity of the general licensee by name and address;

(B) The type, model number, and serial number of the device received; and the source serial(s), nuclide(s), activity, and date(s) of original activity of radioactive material contained in the device;

(C) The date of receipt; and

(D) In the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv) If the licensee makes changes to a device possessed by a person generally licensed under WAC 246-233-020, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(v) If no transfers have been made to or from persons generally licensed under WAC 246-233-020 during the reporting period, the report ((~~shall~~)) must so indicate.

(vi) The report ((~~shall~~)) must cover each calendar quarter, ((~~shall~~)) must clearly indicate the period covered by the report, and ((~~shall~~)) must be filed within thirty days of the end of the calendar quarter.

(vii) The report ((~~shall~~)) must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(d) Reports to ((~~other departments~~)) NRC or an agreement state regulatory agency.

(i) ((~~Report to the United States Nuclear Regulatory Commission all transfers of such devices to persons for use under the United States Nuclear Regulatory Commission general license in Section 31.5 of 10 C.F.R. Part 31 and all receipts of devices therefrom.~~)) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to persons generally licensed under the NRC's regulations equivalent to WAC 246-233-020 must report to the NRC all transfers of devices to persons for use under a general license equivalent to WAC 246-233-020 and all receipts of devices from persons licensed under regulations equivalent to WAC 246-233-020.

(ii) ((~~Report to the responsible department all transfers of devices manufactured and distributed pursuant to this section for use under a general license in that state's regulations equivalent to WAC 246-233-020 and all receipts of devices from persons generally licensed under WAC 246-233-020 or~~

~~equivalent.~~)) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to persons generally licensed under an agreement state's regulations equivalent to WAC 246-233-020 must report to the agreement state's regulatory authority all transfers of devices to persons for use under a general license equivalent to WAC 246-233-020 and all receipts of devices from persons licensed under regulations equivalent to WAC 243-233-020.

(iii) Such report((~~s shall~~)) must be clear and legible and contain all of the data required. The required information for transfers to general licenses must include:

(A) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use;

(B) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(C) The date of transfer;

(D) The type ((~~and~~)), model number and serial number of the device transferred; and

(E) The quantity and type of radioactive material contained in the device.

(iv) If one or more intermediate persons will temporarily possess the device at the intended place of use ((~~prior to~~)) before its possession by the user, the report ((~~shall~~)) must include ((~~identification of each intermediate person by name, address, contact, and relationship to the intended user~~)) the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(v) For devices received from persons generally licensed under NRC's or an agreement state's regulations equivalent to WAC 246-233-020, the report must include:

(A) The identity of the general licensee by name and address;

(B) The type, model number, and serial number of the device received;

(C) The date of receipt; and

(D) In the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(vi) If the licensee makes changes to a device possessed by a person generally licensed under NRC's or an agreement state's regulations equivalent to WAC 246-233-020, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(vii) The report ((~~shall be submitted~~)) must cover each calendar quarter, must be filed within thirty days ((~~after~~)) of the end of ((~~each~~)) the calendar quarter ((~~in which such a device is transferred to the generally licensed person~~)), and ((~~shall~~)) must clearly indicate the period covered by the report.

(viii) The report ((~~shall~~)) must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(ix) If no transfers have been made to ((~~United States Nuclear Regulatory Commission~~)) or from NRC licensees during the reporting period, this information shall be reported to the ((~~United States Nuclear Regulatory Commission~~)) NRC.

(x) If no transfers have been made to or from general licensees within ((~~a particular~~)) an agreement state during the reporting period, this information shall be reported to the responsible ((~~department~~)) agreement state agency upon request of the ((~~department~~)) agency.

(e) The person shall maintain all information and keep records concerning transfers and receipts of devices that support the reports required by this section. Records required by this section ((~~shall~~)) must be maintained for a period of three years following the date of the recorded event.

(f) If a notification of bankruptcy has been made under WAC 246-233-050 or the license is to be terminated, each person licensed under this section shall provide, upon request, to the department, the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state, ((~~or a licensing state,~~)) records of final disposition required under this subsection (4) ((~~of this section~~)) (e).

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-235-097 Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of WAC 246-233-040 will be approved if:

(1) The applicant satisfies the general requirements specified in WAC 246-235-020;

(2) The radioactive material is to be prepared for distribution in prepackaged units of:

(a) Iodine-125 in units not exceeding 370 kilobecquerels (10 microcuries) each;

(b) Iodine-131 in units not exceeding 370 kilobecquerels (10 microcuries) each;

(c) Carbon-14 in units not exceeding 370 kilobecquerels (10 microcuries) each;

(d) Hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerels (50 microcuries) each;

(e) Iron-59 in units not exceeding 740 kilobecquerels (20 microcuries) each;

(f) Cobalt-57 in units not exceeding 370 kilobecquerels (10 microcuries) each;

(g) Selenium-75 in units not exceeding 370 kilobecquerels (10 microcuries) each;

(h) Mock Iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 185 becquerels (0.005 microcurie) of americium-241 each.

(3) Each prepackaged unit bears a durable, clearly visible label:

(a) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerels (10 microcuries) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1850 kilobecquerels (50 microcuries) of hydro-

gen-3 (tritium); 740 kilobecquerels (20 microcuries) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 185 becquerels (0.005 microcurie) of americium-241 each; and

(b) Displaying the radiation caution symbol described in WAC 246-221-120 (1)(a) and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for internal or external use in humans or animals."

(4) One of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(a) This radioactive material may be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for *in vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the ((~~United States Nuclear Regulatory Commission~~)) NRC or of a state with which the ((~~commission~~)) NRC has entered into an agreement for the exercise of regulatory authority.

. . . . . .
Name of manufacturer

(b) This radioactive material may be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for *in vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of ((~~a licensing~~)) the NRC or an agreement state.

. . . . . .
Name of manufacturer

(5) The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements ((~~set out~~)) in WAC 246-221-170 of these ((~~regulations~~)) rules.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-235-100 Manufacture, production, preparation, ((~~and/~~))or transfer of radiopharmaceuticals for medical use. (1) An application for a specific license to manufacture, produce, prepare, ((~~and/~~))or transfer for distribution radiopharmaceuticals containing radioactive material for use by persons licensed under chapter 246-240 WAC for medical use in humans will be approved if:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020;

(b) The applicant submits evidence that the applicant is:

(i) Registered or licensed with the ((~~U.S.~~)) Food and Drug Administration (FDA) as a drug manufacturer, preparer, propagator, compounder or processor of a drug under 21 C.F.R. 207.20(a); or

(ii) Licensed as a nuclear pharmacy by the state board of pharmacy;

(iii) Registered or licensed as a radiopharmaceutical production facility or nuclear pharmacy with the ((~~U.S. Nuclear Regulatory Commission~~)) NRC or a state agency;

(iv) Operating as a nuclear pharmacy within a federal medical institution; or

(v) A positron emission tomography drug production facility registered with a state agency.

(c) The applicant submits information on the radionuclide, chemical and physical form, maximum activity per vial, syringe, generator, or other container of the radiopharmaceutical, and shielding provided by the packaging of the radioactive material which is appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and

(d) The applicant satisfies the following labeling requirements:

(i) Those specified by the state board of pharmacy in WAC 246-903-020 for both commercial and noncommercial distribution;

(ii) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol, the words "caution-radioactive material" or "danger-radioactive material," the name of the radioactive drug or its abbreviation, and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than one hundred days, the time may be omitted;

(iii) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol, the words "caution-radioactive material" or "danger-radioactive material" and an identifier that allows the syringe, vial, or other container to be correlated with the information on the transport radiation shield label; and

(iv) For a drug manufacturer, the labels required by this subsection are in addition to the labeling required by the Food and Drug Administration (FDA) and may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

(2) A medical facility or an educational institution, may produce positron emission tomography or other approved accelerator-produced radioactive drugs, for noncommercial transfer to licensees within their consortium, as defined in WAC 246-220-010 and 246-235-010, if they have a valid Washington radioactive materials license and are authorized for medical use under chapter 246-240 WAC or an equivalent agreement state or ((~~U.S. Nuclear Regulatory Commission~~)) NRC license; and

(a) Request authorization to produce accelerator-produced radionuclides at a radionuclide production facility within their consortium to prepare approved radioactive drugs for use only by licensees within that consortium. The applicant must have a current state radioactive materials

license or evidence of an existing license issued by ((~~U.S. Nuclear Regulatory Commission or another~~)) an agreement state.

(b) The applicant must be qualified to produce radioactive drugs for medical use by meeting the criteria in subsections (1) and (3) of this section.

(c) Identification of individual(s) authorized to prepare radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in subsection (3) of this section.

(d) Labeling information identified in subsection (1)(d) of this section is applied to any radiopharmaceuticals or radioactive materials to be noncommercially transferred to members of its consortium.

(3) A nuclear pharmacy licensee:

(a) May prepare radiopharmaceuticals for medical use provided the radiopharmaceutical is prepared by or under the supervision of an authorized nuclear pharmacist.

(b) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) This individual qualifies as an authorized nuclear pharmacist as defined in WAC 246-240-010;

(ii) This individual meets the state board of pharmacy requirements in WAC 246-903-030, Nuclear pharmacists, and the requirements of WAC 246-240-081 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) This individual is designated as an authorized nuclear pharmacist in accordance with (d) of this subsection.

(c) The actions authorized in (a) and (b) of this subsection are permitted in spite of more restrictive language in license conditions.

(d) May designate a pharmacist as an authorized nuclear pharmacist if:

(i) The individual was identified as of December 2, 1994, as an "authorized user" on a nuclear pharmacy license issued by the department, the ((~~U.S.~~)) NRC, or an agreement state; or

(ii) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material, and the individual practiced at a pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007, or at any other pharmacies as of December 1, 2008.

(e) Shall provide to the department a copy of each individual's letter of notification from the state board of pharmacy recognizing the individual as a nuclear pharmacist, within thirty days of the date the licensee allows the individual to work as an authorized nuclear pharmacist under (b), (c) or (d) of this subsection.

((~~(3)~~)) (4) A manufacturer or nuclear pharmacy licensee shall possess and use instrumentation to measure the radioactivity of radiopharmaceuticals. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radiopharmaceuticals, prior to transfer for commercial distribution. In addition, the licensee shall:

(a) Perform tests on each instrument before initial use, periodically, and following repair, ((~~on each instrument~~)) for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) Check each instrument for constancy and proper operation at the beginning of each day of use.

((~~(4)~~)) (5) A licensee preparing radiopharmaceuticals from generators; (e.g., molybdenum-99/technetium-99m or rubidium-82 from strontium-82/rubidium-82) shall test generator eluates for breakthrough or contamination of the parent ((~~isotope~~)) nuclide, in accordance with WAC 246-240-160. The licensee shall record the results of each test and retain each record for three years after the record is made.

((~~(5)~~)) (6) Nothing in this section relieves the licensee from complying with applicable FDA, ((~~other~~)) federal, and state requirements governing radiopharmaceuticals.

AMENDATORY SECTION (Amending WSR 07-14-131, filed 7/3/07, effective 8/3/07)

WAC 246-235-102 Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under chapter 246-240 WAC for use as a calibration, transmission, or reference source or for the uses listed in WAC 246-240-251, 246-240-301, and 246-240-351 will be approved if:

(1) The applicant satisfies the general requirements in WAC 246-235-020;

(2) The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(a) The radioactive material contained, its chemical and physical form and amount;

(b) Details of design and construction of the source or device;

(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(d) For devices containing radioactive material, the radiation profile of a prototype device;

(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(f) Procedures and standards for calibrating sources and devices;

(g) Legend and methods for labeling sources and devices as to their radioactive content; and

(h) Instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device: Provided that instructions which are too lengthy for the label may be summarized on the label and printed in detail on a brochure which is referenced on the label.

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the named source or device is licensed by the department for distribution to persons licensed under chapter 246-240 WAC or under equivalent regulations of the ((~~United States Nuclear Regulatory Commission,~~)) NRC or an agreement state ((~~or a licensing state~~)): Provided that the labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source.

(4) If the applicant desires that the source or device be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source.

(5) In determining the acceptable interval for test of leakage of radioactive material, the department will consider information that includes, but is not limited to:

(a) Primary containment (source capsule);

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical sources or devices or similarly designed and constructed sources or devices.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-235-103 Prototype tests for manufacture of calibration or reference sources containing americium-241 or radium-226. An applicant for a license under this chapter shall, for any type of source which is designed to contain more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226, conduct prototype tests, in the order listed, on each of no less than five prototypes of the source, which contains more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226, as follows:

(1) *Initial measurement*. The quantity of radioactive material deposited on the source shall be measured by direct counting of the source.

(2) *Dry wipe test*. The entire radioactive surface of the source shall be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper or by direct measurement of the radioactivity on the source following the dry wipe.

(3) *Wet wipe test*. The entire radioactive surface of the source shall be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper after it has dried or by direct measurement of the radioactivity remaining on the source following the wet wipe.

(4) *Water soak test*. The source shall be immersed in water at room temperature for a period of twenty-four consecutive hours. The source shall then be removed from the water. Removal of radioactive material from the source shall be determined by direct measurement of the radioactivity on the source after it has dried or by measuring the radioactivity in the residue obtained by evaporation of the water in which the source was immersed.

(5) *Dry wipe test*. On completion of the preceding test in this section, the dry wipe test described in subsection (2) of this section shall be repeated.

(6) *Observations*. Removal of more than 0.005 microcurie (185 becquerels) of radioactivity in any test prescribed by this section shall be cause for rejection of the source design. Results of prototype tests submitted to the department or the ((~~U.S. Nuclear Regulatory Commission~~)) NRC shall be given in terms of radioactivity in microcuries (or becquerels) and percent of removal from the total amount of radioactive material deposited on the source.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

WAC 246-235-105 Manufacture, assembly or distribution of radioactive material exempt from regulation. ((~~(1) *Licensing the introduction of radioactive material into products in exempt concentrations.* In addition to the requirements set forth in WAC 246-235-020, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under WAC 246-232-010(1) will be issued if:~~

~~(a) The applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioactive material in the product or material at the time of transfer; and~~

~~(b) The applicant provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in WAC 246-232-130, Schedule C, that reconstruction of the radioactive material in concentrations exceeding those in WAC 246-232-130, Schedule C, is not likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to a human being.~~

~~(c) Each person licensed under subsection (1) of this section shall file an annual report with the department which shall identify the type and quantity of each product or mate-~~

~~rial into which radioactive material has been introduced during the reporting period; name and address of the person who owned or possessed the product and material, into which radioactive material has been introduced, at the time of introduction; the type and quantity of radionuclide introduced into each such product or material; and the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee. If no transfers of radioactive material have been made pursuant to subsection (1) of this section during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within thirty days thereafter.~~

~~(2) *Licensing the distribution of certain radioactive material in exempt quantities.**~~

~~*Note: Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity or other product containing source material or radioactive material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the department or the United States Nuclear Regulatory Commission, Washington, D.C. 20555.~~

~~(a) An application for a specific license to distribute naturally occurring and accelerator-produced radioactive material (NARM) to persons exempted from these regulations pursuant to WAC 246-232-010 (2)(b) will be approved if:~~

~~(i) The radioactive material is not contained in any food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;~~

~~(ii) The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product, or device intended for commercial distribution; and~~

~~(iii) The applicant submits copies of prototype labels and brochures and the department approves such labels and brochures.~~

~~(b) The license issued under (a) of this subsection is subject to the following conditions:~~

~~(i) No more than ten exempt quantities shall be sold or transferred in any single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantity provided the sum of the fractions shall not exceed unity.~~

~~(ii) Each exempt quantity shall be separately and individually packaged. No more than ten such packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to WAC 246-232-010 (2)(b). The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour.~~

~~(iii) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:~~

~~(A) Identifies the radionuclide and the quantity of radioactivity; and~~

~~(B) Bears the words "radioactive material."~~

~~(iv) In addition to the labeling information required by (b)(iii) of this subsection, the label affixed to the immediate container, or an accompanying brochure, shall:~~

~~(A) State that the contents are exempt from licensing state requirements;~~

~~(B) Bear the words "Radioactive material - Not for human use - Introduction into foods, beverages, cosmetics, drugs, or medicinals, or into products manufactured for commercial distribution is prohibited - Exempt quantities should not be combined"; and~~

~~(C) Set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.~~

~~(c) Each person licensed under (a) of this subsection shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under WAC 246-232-010 (2)(b) or the equivalent regulations of a licensing state, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the department. Each report shall cover the year ending June 30, and shall be filed within thirty days thereafter. If no transfers of radioactive material have been made pursuant to subsection (2) of this section during the reporting period, the report shall so indicate.~~

~~(3) *Licensing the incorporation of naturally occurring and accelerator produced radioactive material into gas and aerosol detectors.* An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under WAC 246-232-012 will be approved if the application satisfies requirements equivalent to those contained in Section 32.26 of 10 C.F.R. Part 32.~~

~~*Note: Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity or other product containing source material or radioactive material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the department or the United States Nuclear Regulatory Commission, Washington, D.C. 20555.~~))

A person may not introduce radioactive material into a product or material knowing, or having reason to believe, that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-235-130 Appendix—General laboratory rules for safe use of unsealed sources. (1) In addition to the requirements ((~~set forth~~)) in WAC 246-235-020, a specific licensee who uses unsealed, unplated ((~~and/~~))or liquid sources shall possess adequate facilities including ventilation systems which are compatible with the proposed uses: and,

(2) Possess, use, and store((~~,~~)) radioactive material((~~s~~)) in accordance with, but not limited to, the following:

(a) Receive, handle, and store radioactive material((s)) only at specifically designated locations within the applicant's facility. Vessels containing radioactive material must be labeled as required by chapter 246-221 WAC.

(b) Wear disposable gloves at all times when handling dispersible radioactive material or potentially contaminated items.

(c) Wear personnel monitoring devices (film badge ((and/)), OSL, or TLD), when required, at all times when working with, or in the vicinity of, radioactive materials. Extremity doses ((shall)) be considered ((in)) when evaluating the need for separate extremity dosimeters. Extremity dosimetry should be worn when working with millicurie or greater quantities of material (excluding low energy beta emitters and pure alpha emitters). Monitoring devices, when not in use, ((shall)) must be stored only in a designated low-background area. Calculations based on ((whole-body badge)) whole-body dosimeter results for photon-emitters may be used in lieu of separate extremity dosimeters.

(d) Use remote tools, lead shields, lead-glass shields, ((and/))or plexiglass shields as appropriate.

(e) Prohibit eating, chewing, drinking, smoking, and application of cosmetics in any area where radioactive material is used or stored.

(f) Do not store food, drink or personal effects in any area, container, or refrigerator designated for radioactive materials use or storage.

(g) Do not pipette radioactive materials or perform any similar operation by employing mouth suction.

(h) Use disposable absorbent material with impervious backing to cover work surfaces where spillage is possible.

(i) Properly dress and protect open wounds on exposed body surfaces before working with radioactive materials.

(j) Wear laboratory coats when working with radioactive material. Potentially contaminated laboratory coats shall not be worn outside the immediate work area.

(k) Nuclides in gaseous or volatile form, or with a high potential for volatilization shall be used only in areas with adequate ventilation systems.

WSR 13-18-051
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Admin. No. 2013-01—Filed August 30, 2013, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-046.

Title of Rule and Other Identifying Information: Public employees benefits board (PEBB) rules related to enrollment in chapter 182-08 WAC; eligibility in chapter 182-12 WAC; and appeals in chapter 182-16 WAC.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on October 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 9, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on October 8, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 30, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends existing rules and adds a new rule in Title 182 WAC specific to the PEBB program with the following effect:

1. Implements PEBB policy resolutions:

- Allowing nonmedicare retirees to defer enrollment in PEBB retiree insurance if enrolled in coverage through any health benefit exchange established under the Affordable Care Act. Nonmedicare retirees who defer enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll in a PEBB health plan;
- Providing that if an employing agency fails to enroll an employee in benefits, retroactive medical and dental enrollment will not exceed three months, unless HCA determines additional recourse is warranted. Recourse will be provided in accordance with each situation;
- Clarifying that blind vendors are not eligible for PEBB retiree insurance;
- Allowing employees awarded a retroactive disability retirement under a higher education retirement plan by the appropriate authority to enroll retroactive to the date of retirement or prospective from the date on the award notice; and
- Clarifying that a stepchild's relationship to a subscriber (and eligibility as a PEBB dependent) ends on the same date the subscriber's legal relationship with the spouse or domestic partner ends.

2. Makes technical amendments to the definition of child to align with state statutes.

3. Amends the employer group application process to support implementation of ESSB 5940 under which a school district may be required to purchase employee health care through PEBB if the district fails to comply with OIC data reporting requirements during two reporting periods.

4. Amends the employer group application process to clarify that member level census data must include data for retired employees participating under a group's current health plan.

5. Amends special open enrollment rules to make technical corrections to comply with HIPAA special open enrollment requirements and to allow a coverage effective date of the first day of the month under certain circumstances.

6. In addition to these specific changes, HCA conducted a full review of these chapters and made some changes for readability.

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: Chapter 3, Laws of 2012 (ESSB 5940).

Rule is necessary because of federal law, the Health Insurance Portability and Accountability Act (HIPPA).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Rob Parkman, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0883; Implementation: Barbara Scott, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0830; and Enforcement: Mary Fliss, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0822.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

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

August 30, 2013
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in or waive enrollment in a medical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer-sponsored medical" includes insurance coverage continued by the employee or ((~~their~~)) his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree plan" means the Federal Employees' Health Benefits Program (FEHB) and Tricare.

"Health plan" or "plan" means a plan offering medical coverage or dental ((~~plan~~)) coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

((~~"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the director, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.~~))

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in or waive enrollment in a medical plan, and employees may enroll or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group medical coverage as required under WAC 182-12-128, or is on approved educational leave and obtains comprehensive group health plan coverage as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-120 Employer contribution. The ((~~employers'~~)) employer contribution must be used to provide insurance coverage for the basic life insurance benefit, the basic long-term disability insurance benefit, medical, and dental, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for employees employed by state agencies.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-180 Premium payments and premium refunds. Premiums are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (2) or (3).

(1) **Premium payments.** Public employees benefits board (PEBB) insurance coverage premiums ((~~begin to accrue~~)) become due the first of the month in which ((~~PEBB~~)) insurance coverage is effective.

Premium is due from the subscriber for the entire month of insurance coverage and will not be prorated during any month.

(((~~(1) A newly eligible employee must complete the appropriate enrollment forms to enroll or waive coverage within thirty-one days after becoming eligible as described in WAC 182-08-197.~~

~~(a) If an employing agency does not notify an employee of his or her eligibility for benefits, as required in WAC 182-12-113, until after the thirty-one-day period has expired, the employing agency must:~~

~~(i) Notify the employee of his or her eligibility for PEBB benefits as described in WAC 182-08-197(3); and~~

~~(ii) Remit both the employer contribution and the employee contribution for medical premiums from the date benefits begin as described in WAC 182-12-114 to the health care authority (HCA). A state agency may not collect from the employee any portion of the medical premium for months prior to the state agency's notification to the employee.~~

~~(b) If an employing agency fails to enroll an employee as required in WAC 182-08-197, the employing agency must:~~

~~(i) Correct the enrollment error; and~~

~~(ii) Remit both the employer contribution and the employee contribution for medical premiums due for insurance coverage from the date PEBB benefits begin as described in WAC 182-12-114 to the HCA. A state agency may only collect the employee contribution for medical premiums for the three months prior to the month the state agency corrects the error.~~

~~(c)~~)) (a) If an employee elects optional coverage as described in WAC 182-08-197 (((~~(2)~~)) (1)(a) or (((~~(b)~~)) (3)(a), the employee is responsible for payment of premiums from the month that the optional coverage begins.

(b) Unpaid or underpaid accounts must be paid, and are due from the employing agency, subscriber or beneficiary to the HCA. If payment in a lump sum is a hardship, the HCA may develop a reasonable repayment plan with the subscriber or beneficiary upon request.

(2) **Premium refunds.** PEBB premiums will be refunded using the following method:

(((~~(2)~~))) (a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the employing agency any excess premium paid during the three month adjustment period, except as indicated in WAC 182-12-148(4).

(((~~(3)~~))) (b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-025, showing proof of extraordinary circumstances beyond his or her control such that it was effectively impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium occurred, the PEBB ((~~assistant~~)) deputy director or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium. ((~~The written appeal must provide proof of the following:~~

~~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.~~

~~(4)~~)) (c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example medicare) the subscriber or beneficiary may be eligible for a refund of all premiums paid during the time he or she was enrolled under the federal program if approved by the PEBB ((~~assistant~~)) deputy director or designee.

(((~~(5) Accounts reflecting an underpayment to HCA must be paid, and are due from the employing agency, subscriber or beneficiary to the HCA. Upon request, the HCA may develop a repayment plan designed to reduce hardship.~~

~~(6)~~)) (d) HCA errors will be corrected by returning all excess premiums paid by the employing agency, subscriber, or beneficiary.

(((~~(7)~~))) (e) Employing agency errors will be corrected by returning all excess premiums paid by the employee or beneficiary.

NEW SECTION

WAC 182-08-187 How do employing agencies correct enrollment errors and is there a limit on retroactive enrollment? If an employing agency fails to notify an employee of his or her eligibility for public employees benefits board (PEBB) benefits and the employer contribution as required in WAC 182-12-113 or the employer group contract, or fails to accurately enroll insurance coverage, the agency is authorized and required to correct the error as described in this section.

The employing agency or PEBB designee must enroll the employee in PEBB benefits as described in subsection (1) of this section, reconcile premium payments as described in subsection (2) of this section, and provide recourse as described in subsection (3) of this section.

Note: If the employing agency failed to provide the notice required in WAC 182-12-113 or the employer group contract before the end of the employee's thirty-one day enrollment period described in WAC 182-08-197 (1)(a), it must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period. Employees who do not return enrollment forms default to enrollment according to WAC 182-08-197 (1)(b).

(1) **Enrollment.**

(a) Medical and dental enrollment is limited to three months prior to the date enrollment is processed unless the authority determines additional recourse is warranted, as described in subsection (3) of this section;

(b) Basic life and basic LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance coverage begins on that date;

(c) Optional life and optional LTD insurance is retroactive to the first day of the month following the day the

employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date of the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Optional insurance coverage is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue optional LTD insurance coverage during the period of leave, optional LTD insurance coverage is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional insurance coverage under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending account (FSA) or dependent care assistance program (DCAP), enrollment is limited to three months prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in FSA or DCAP as elected, the employee may adjust his or her election. The employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect.

(2) **Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, basic life, and basic LTD from the date insurance coverage begins as described in subsection (1) of this section. If a state agency failed to notify a newly eligible employee of his or her eligibility for PEBB benefits, the state agency may only collect the employee contribution for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of optional life or optional LTD insurance coverage elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When premium refunds are due to the employee, the optional coverage vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premium refunds.

(3) **Recourse.**

(a) Eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. When retroactive enrollment is limited as described in subsection (1) of this section, the employing agency must work with the employee, and the authority, to implement retroactive insurance coverage within the following parameters:

(i) Retroactive enrollment in a PEBB health plan;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid for medical and dental premiums; or

(iv) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-08-190 The employer contribution is set by the HCA and paid to the HCA for all eligible employees. State agencies and employer groups that participate in the PEBB program under contract with the HCA must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions for state agencies set by the HCA are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each employee of a state agency eligible under WAC 182-12-131 or each eligible employee of a state agency on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution as described in WAC 182-12-138. The entire employer contribution is due and payable to HCA even if medical is waived.

(4) Employees of employer groups eligible under criteria stipulated under contract with the HCA are eligible for the employer contribution. The entire employer contribution is due and payable to the HCA even if medical is waived.

(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 182-12-114 or 182-12-131.

(6) The terms of payment to HCA for employer groups shall be stipulated under contract with the HCA.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-197 When must newly eligible employees, or employees who regain eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete enrollment forms? Employees who are newly eligible or who regain eligibility for the employer contribution toward PEBB benefits enroll as described in this section.

(1) When an employee((~~s who are~~)) is newly eligible for PEBB benefits:

(a) The employee must complete the ((~~appropriate~~)) required forms indicating enrollment elections and ((~~their health plan choice, or their decision to waive medical under WAC 182-12-128. Employees must~~)) return the forms to ((~~their~~)) his or her employing agency no later than thirty-one days (sixty days for life insurance) after ((~~they~~)) the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) The employee may enroll in optional life and optional LTD insurance up to the guaranteed issue without evidence of insurability if enrollment forms are returned to the employee's employing agency as required.

Note: An employee may apply for optional life and optional long-term disability insurance after the period of time described in this subsection by providing evidence of insurability and receiving approval from the contracted vendor.

(ii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee will automatically enroll in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to his or her state agency no later than thirty-one days after becoming eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required enrollment form to his or her state agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(b) If a newly eligible employee((~~s who do~~)) does not return enrollment forms to ((~~their~~)) his or her employing agency indicating ((~~their~~)) medical, dental and LTD choice within thirty-one days and life insurance choice within sixty days his or her coverage will be enrolled as follows:

(((~~(a)~~))) (i) Medical enrollment will be Uniform Medical Plan Classic;

(((~~(b)~~))) (ii) Dental enrollment (((~~if the employer group participates in PEBB dental~~))) will be Uniform Dental Plan;

(((~~(c)~~))) (iii) Basic life insurance (((~~unless the employing agency does not participate in this PEBB insurance coverage~~)));

(((~~(d)~~))) (iv) Basic long-term disability insurance (((~~unless the employing agency does not participate in this PEBB insurance coverage~~))); and

(((~~(e)~~))) (v) Dependents will not be enrolled.

(2) ((~~Employees who are newly eligible may enroll in optional insurance coverage (except for employees of employer groups 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 employing 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 employing agency no later than thirty-one days after becoming eligible for PEBB benefits.~~

~~(c) Employees may apply for optional life and optional long-term disability insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.~~

~~(3) If an employing agency does not notify a newly eligible employee of his or her eligibility for PEBB benefits, as required in WAC 182-12-113, until after the thirty-one-day period described in subsection (1) of this section has expired, then the following must occur:~~

~~(a) The employing agency must notify the employee of his or her eligibility for PEBB benefits and his or her requirement to complete and return enrollment forms.~~

~~(b) The employee must complete and return the appropriate forms as follows:~~

~~(i) An enrollment form indicating enrollment and health plan choice (if applicable indicating a decision to waive medical) no later than thirty-one days from the date of the employing agency's notice to the employee;~~

~~(ii) To enroll in optional coverage, a life insurance enrollment form no later than sixty days from the date of the employing agency's notice to the employee and a long-term disability insurance enrollment form no later than thirty-one days from the date of the employing agency's notice to the employee.~~

~~(c) Employees who do not return the appropriate forms to their employing agency indicating their medical and dental choice will be enrolled in a health plan according to subsection (1)(a), (b), and (c) of this section.~~

~~(d) Employees who do not return the appropriate forms to their employing agency indicating optional coverage elections, are not eligible to enroll in optional coverage, except as described in subsection (2)(c) of this section.~~

~~(4) Employees who are eligible to participate in the state's salary reduction plan (see WAC 182-12-116) will automatically enroll in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, new employees must complete the appropriate form and return it to their state agency no later than thirty-one days after they become eligible for PEBB benefits.~~

~~(5) Employees who are eligible to participate in the state's salary reduction plan may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both. To enroll in these optional PEBB benefits, employees must return the appropriate enrollment forms to their state agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.~~

~~(6)~~)) The employer contribution toward insurance coverage ends according to WAC 182-12-131. When an employee's employment ends, participation in the state's salary reduction plan ends.

(3) When an employee((~~s who become newly eligible~~)) loses and later regains eligibility for the employer contribution ((~~enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same~~)) toward insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2):

(a) The employee must complete and return the required forms indicating enrollment elections to his or her employing agency no later than thirty-one days after regaining eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability;

(ii) An employee who was eligible to continue optional life under continuation coverage but discontinued that insurance coverage must submit evidence of insurability;

(iii) An employee who was eligible to continue optional LTD under continuation coverage but discontinued that insurance coverage must submit evidence of insurability for optional LTD insurance when he or she regains eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return an optional LTD insurance election form. His or her optional LTD insurance will be automatically reinstated:

(i) The employee continued to self-pay for his or her optional LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue optional LTD insurance after losing eligibility for the employer contribution.

Exception: An employee's insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in ((~~state service~~)) PEBB coverage. This includes movement of employees between any entities described in WAC 182-12-111 and participating in PEBB benefits. (((~~b~~))) Insurance coverage elections also remain the same when employees have a break in ((~~state service~~)) employment that does not interrupt ((~~their~~)) his or her employer contribution toward PEBB insurance coverage.

(c) ((~~When employees continue insurance coverage by self paying the full premium under WAC 182-12-133(1) or 182-12-142 and regain eligibility for the employer contribution before the end of the maximum number of months allowed for continuing PEBB health plan enrollment under those rules. Employees who are eligible to continue optional life or optional long-term disability under continuation coverage but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to work or regain eligibility for the employer contribution.~~

~~(7) When an employee's employment ends, participation in the state's salary reduction plan ends.~~)) If an employee does not return the required forms to his or her employing agency within thirty-one days of regaining eligibility, medical, dental, life, and LTD enrollment will be as described in subsection (1)(b) of this section, except as described in (b) of this subsection.

(d) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required enrollment form to his or her state agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(4) If ((~~the~~)) an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or FSA administrator of his or her employment transfer within the current plan year.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-198 When may a subscriber change health plans? Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the annual open enrollment. The subscriber must submit the ((~~appropriate~~)) required enrollment forms to change his or her health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for ((~~either~~)) the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the ((~~appropriate~~)) required enrollment forms (and a completed disenrollment form, if required) no later than sixty days after the event occurs. Employees submit the enrollment forms to their employing agency. All other subscribers submit the enrollment forms to the public employees benefits board (PEBB) program. ((~~Insurance coverage in the~~)) Subscribers must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, ((~~insurance~~)) health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(d) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan. If the subscriber does not select a new health plan, the PEBB program may change the subscriber's health plan as described in WAC 182-08-196(2);

(e) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(f) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(g) Subscriber or a subscriber's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP~~));

(((~~(g)~~))) (h) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or ((~~disenrolls from~~)) cancels enrollment in a medicare Part D plan. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-08-196(1);

(((~~(h)~~))) (i) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(((~~(i)~~))) (j) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

(ii) Transplant within the last twelve months; or

(iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

(iv) Recent major surgery still within the postoperative period of up to eight weeks; or

(v) Third trimester of pregnancy.

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.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-199 When may an employee enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? An ((~~eligible~~)) employee (((~~,~~))) who is eligible to participate in the state's salary reduction plan as described in WAC 182-12-116((~~,~~)) may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When ((~~they are~~)) newly eligible under WAC 182-12-114, as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee (((~~as described in WAC 182-12-116~~))) may enroll in or change ((~~their~~)) his or her election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. The employee((~~s~~)) must submit, in paper or online, the ((~~appropriate~~)) required enrollment form to enroll or reenroll no later than the last day of the annual open enrollment. The enrollment or new election will be effective January 1st of the following year.

(3) **During a special open enrollment:** An employee((~~s~~)) may enroll or change ((~~their~~)) his or her election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the ((~~appropriate~~)) required enrollment forms as instructed on the forms no later than sixty days after the event occurs. The employee must provide evidence of the event that created the special open enrollment.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC Section 152.

(a) **Premium payment plan.** An employee may enroll or change his or her election under the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership when the dependent is a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability;

(ii) Employee's dependent no longer meets public employees benefits board (PEBB) eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a domestic partner who is a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(v) Employee or an employee's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Employee or an employee's dependent has a change in residence that affects health plan availability;

(vii) Employee's dependent has a change in residence from outside of the United States to within the United States;

(viii) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(ix) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(x) Employee or an employee's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the employee or employee's dependent loses eligibility for coverage under medicaid or CHIP~~));

(((~~x~~))) (xi) Employee or an employee's dependent ((~~gains or loses eligibility for~~)) becomes entitled to coverage under medicare, or the employee or an employee's dependent loses eligibility for coverage under medicare, or enrolls in or cancels enrollment in a medicare Part D plan;

(((~~xi~~))) (xii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the employee or employee's dependent is no longer eligible for an HSA;

(((~~xii~~))) (xiii) Employee or an employee's dependent experiences a disruption of care that could function as a reduction in benefits for the employee or the employee's dependent for a specific condition or ongoing course of treatment. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(((~~A~~))) • Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

(((~~B~~))) • Transplant within the last twelve months; or

(((~~C~~))) • Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

(((~~D~~))) • Recent major surgery still within the postoperative period of up to eight weeks; or

(((~~E~~))) • Third trimester of pregnancy.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Flexible spending account (FSA).** An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following approval by the FSA administrator.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

(((~~(iv)~~)) (v) A court order or national medical support notice requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(((~~(v)~~)) (vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or ((~~a state children's health insurance program (~~))CHIP((~~)~~));

(((~~(vi)~~)) (vii) Employee or an employee's dependent ((~~gains or loses eligibility for~~)) becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or change his or her election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following approval by the DCAP administrator.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(iv) Employee changes dependent care provider; the change to DCAP can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (((~~(a)(1) through (8)~~)) (d)(1) through (5), incorporating the rules of Section 152 (b)(1) ((~~and (2)~~)) through (3) of the IRC.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-235 Employer group application process. This section applies to employer groups as defined in WAC 182-08-015. An employer group may apply to obtain insurance coverage through a contract with the health care authority (HCA). With the exception of K-12 school districts and educational service districts, the authority will approve or deny the application through the evaluation criteria described in WAC 182-08-240. To apply, the employer group must submit the documents and information described in this rule to the public employees benefits board (PEBB) program at least sixty days before the requested coverage effective date. K-12 school districts and educational service districts are only required to provide the documents described in subsections (1), (2), and (3) of this section. If a K-12 school district is required by the superintendent of public instruction to purchase insurance coverage provided by the authority, the school district is required to submit documents and information described in subsections (1)(c), (2), and (3) of this section.

(1) A letter of application that includes the information described in (a) through (d) of this subsection:

(a) A reference to the employer group's authorizing statute;

(b) A description of the organizational structure of the employer group and a description of the employee bargaining unit(s) or group of nonrepresented employees for which the employer group is applying;

(c) Employer tax ID number (TIN); and

(d) A statement of whether the employer group is requesting only medical ((~~insurance~~)) or medical, dental, life and LTD insurance. K-12 school districts and educational service districts must purchase medical, dental, life, and LTD insurance.

(2) A resolution from the employer group's governing body authorizing the purchase of PEBB ((~~benefits~~)) insurance coverage.

(3) A signed governmental function attestation document that attests to the fact that employees for whom the employer group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(4) A member level census file for all of the employees for whom the employer group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or state registered domestic partner, or child:

(a) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(b) Age;

(c) Gender;

(d) First three digits of the member's zip code based on residence;

(e) Indicator of whether the employee is active or retired, if the employer group is requesting to include retirees; and

(f) Indicator of whether the member is enrolled in coverage.

(5) If the application is for a subset of the employer group's employees (e.g., bargaining unit), the employer group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in subsection (4) of this section. This includes retired employees participating under the employer group's current health plan. The file must include the same demographic data by member.

(6) In addition to the requirements of subsections (1) through (5) of this section, additional information is required based upon the total number of employees that the employer group employs who are eligible under their current health plan:

(a) Employer groups with fewer than eleven eligible employees must provide proof of current coverage or proof of prior coverage within the last twelve months.

(b) Employer groups with ((~~greater than~~)) three hundred ((~~but less than twenty-five~~)) one to two thousand five hundred eligible employees must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months; and

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history.

(c) Employer groups with greater than ((~~twenty-five~~)) two thousand five hundred eligible employees must submit to an actuarial evaluation of the group. The employer group must pay for the cost of the evaluation. This cost is nonrefundable. An employer group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

(d) The following definitions apply for purposes of this section:

(i) "Large claim" is defined as a member that received more than twenty-five thousand dollars in allowed cost for services in a quarter; and

(ii) An "ongoing large claim" is a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than twenty-five thousand dollars in the quarter.

(e) If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant and if the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-240 How will the health care authority (HCA) decide to approve or deny an employer group application? Employer group applications for participation in insurance coverage provided through the public employees benefits board (PEBB) program are approved or denied by the health care authority (HCA) based upon the information and documents submitted by the employer group and the employer group evaluation (EGE) criteria described in this rule. The authority may automatically deny an employer group application if the employer group fails to provide the required information and documents described in WAC 182-08-235.

(1) Employer groups are evaluated as a single unit. To support this requirement the employer group must provide census data for all employees eligible to participate under the employer group's current health plan. This includes retired employees participating under the employer group's current health plan.

(2) An employer group must pass the EGE criteria or the actuarial evaluation required in subsection (3) of this section as a single unit before the ((~~group~~)) application can be approved ((~~for participation~~)). For purposes of this section a single unit includes all employees eligible under the employer group's current health plan. If the application is only for a bargaining unit, then ((~~each~~)) the bargaining unit ((~~of the employer group~~)) must be evaluated using the EGE criteria in addition to all eligible employees of employer group as a single unit. If the employer group passes the EGE criteria as a single unit, but an individual bargaining unit does not, the employer group may only participate if all eligible employees of the entity participate.

(3) The authority will determine which of the criteria in (a) though (d) of this subsection is used to evaluate the employer group based upon the total number of eligible employees in the single unit.

(a) **Micro groups** (a single unit of one to ten employees) must meet the following criteria in order to pass the EGE evaluation:

(i) Provide proof of current coverage or proof of prior coverage within the last twelve months; and

(ii) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor for the nonmedicare PEBB risk pool as determined by the authority.

(b) **Small and medium groups** (a single unit of eleven to three hundred employees) must meet the following criterion in order to pass the EGE evaluation: The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative under-

writing factor for the nonmedicare PEBB risk pool as determined by the authority.

(c) **Large groups** (a single unit of three hundred one to two thousand five hundred employees) must meet the following criteria in order to pass the EGE evaluation:

(i) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor for the nonmedicare PEBB risk pool as determined by the authority;

(ii) One of the following two conditions must be met:

• The frequency of large claims must be less than or equal to the historical benchmark frequency for the PEBB nonmedicare population; and

• The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB nonmedicare population.

(d) **Jumbo groups** (a single unit of two thousand five hundred one or more employees) must meet the following criteria in order to pass the actuarial evaluation:

(i) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor for the nonmedicare PEBB risk pool as determined by the authority;

(ii) One of the following two conditions must be met:

• The frequency of large claims must be less than or equal to the PEBB historical benchmark frequency for the PEBB nonmedicare population;

• The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB nonmedicare population;

(iii) Provide an executive summary of benefits;

(iv) Provide a summary of benefits and certificate of coverage;

(v) Provide a summary of historical plan costs; and

(vi) The evaluation of criteria in (d)(iii), (iv) and (v) of this subsection must indicate that the historical cost of benefits for the employer group is equal to or less than the historical cost of the PEBB nonmedicare population for a comparable plan design.

(4) The group evaluation for a jumbo group is valid for two years after approval by the authority. If an employer group applies to add additional bargaining units after two years the group must be reevaluated.

(5) An entity whose employer group application is denied may appeal the authority's decision to the PEBB appeals committee through the process described in WAC 182-16-038.

(6) An entity whose employer group application is approved may purchase insurance for its employees under the participation requirements described in WAC 182-08-245.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-245 Employer group participation requirements. This section applies to an employer group as defined in WAC 182-08-015 that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group must:

(a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for ((~~PEBB~~)) insurance coverage in accordance with the criteria outlined in the employer group's contract with the authority;

(d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means that only employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions may be considered eligible by the employer group; and

(e) Ensure PEBB health plans are the only employer-sponsored health plans available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums in accordance with its contract with the authority based on the following premium structure:

(a) The premium rate structure for K-12 school districts and educational service districts will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan choice and family enrollment.

Exception: The authority will allow districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.

(b) The premium rate structure for employer groups other than districts described in (a) of this subsection will be a tiered rate based on health plan choice and family enrollment.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) If an employer group wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(4) The employer group must maintain participation in PEBB insurance coverage for at least one full year. An employer group may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group must provide written notice to the PEBB program at least sixty days before the requested termination date.

(5) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in COBRA benefits and the remaining number of months available to

them based on their qualifying event. These employees and dependents may enroll in PEBB medical and dental as COBRA enrollees for the remainder of the months available to them based on their qualifying event.

(6) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than a school district or educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll or waive enrollment in a medical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer-sponsored medical" includes insurance coverage continued by the employee or ((~~their~~)) his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal Retiree Plan" means the Federal Employees Health Benefits program (FEHB) and Tricare.

"Health plan" or "plan" means a plan offering medical coverage or dental ((~~plan~~)) coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

((~~"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.~~))

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

((~~"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the director, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.~~))

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll or waive enrollment in a medical plan, or employees may enroll or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group medical coverage as required under WAC 182-12-128, or is on approved educational leave and obtains comprehensive group health plan coverage as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-111 Eligible entities and individuals. The following entities and individuals shall be eligible for public employees benefits board (PEBB) ((~~insurance coverage~~)) benefits subject to the terms and conditions set forth below:

(1) State agencies. State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer groups. Employer groups may apply to participate in ((~~PEBB~~)) insurance coverage for groups of employees described in subsection (a) of this section at the option of each employer group:

(a) All eligible employees of the entity must transfer as a unit with the following exceptions:

• Bargaining units may elect to participate separately from the whole group;

• Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group; and

• Members of the employer group's governing authority may participate as ((~~defined~~)) described in the employer group's governing statutes and RCW 41.04.205.

(b) The employer group must apply through the process described in WAC 182-08-235. K-12 school district and educational service district applications ((~~do not have to include the census~~)) are required to provide the documents described in WAC 182-08-235 (1), (2), and (3). If a K-12 school district or educational service district is required by the superintendent of public instruction to purchase insurance coverage provided by the authority, the school district or educational service district is required to submit documents and information ((~~required~~)) described in WAC 182-08-235 ((~~(4) or (5)~~)) (1)(c), (2), and (3). Employer group applications are subject to review and approval by the health care authority (HCA). With the exception of K-12 school districts and educational service districts, the authority will approve or deny an employer group's application based on the employer group eligibility criteria described in WAC 182-08-240.

(c) Employer groups participate through a contract with the authority as described in WAC 182-08-245.

(3) School districts and educational service districts. In addition to subsection (2) of this section, the following applies to school districts and educational service districts:

(a) The HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as would be charged to state employees for each participating school district or educational service district.

(b) The HCA may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.-030.

(4) The Washington health benefit exchange. In addition to subsection (2) of this section, the following provisions apply:

(a) The Washington health benefit exchange is subject to the same rules as an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(b) An employee of the Washington health benefit exchange is subject to the same rules as an employee of an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(5) Eligible nonemployees.

(a) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB ((~~insurance coverage~~)) medical.

(i) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(ii) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB ((~~insurance coverage~~)) medical.

(iii) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees in WAC 182-12-260.

(iv) An individual licensee or vendor who ceases to actively operate a facility becomes ineligible to participate in PEBB medical as described in (a) of this subsection. Individuals losing coverage may continue enrollment in PEBB medical on a self-pay basis under COBRA as described in WAC 182-12-146(5).

(v) An individual licensee or vendor is not eligible for PEBB retiree insurance coverage.

(b) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.

(c) School board members or students eligible to participate under RCW 28A.400.350 may participate in ((~~PEBB~~)) insurance coverage as long as they remain eligible under that section.

(6) Individuals and entities that are not eligible include:

(a) Adult family home providers as defined in RCW 70.128.010;

(b) Unpaid volunteers;

(c) Patients of state hospitals;

(d) Inmates;

(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;

(f) Students of institutions of higher education as determined by their institutions; and

(g) Any others not expressly defined as employees under RCW 41.05.011.

AMENDATORY SECTION (Amending WSR 10-20-147, filed 10/6/10, effective 1/1/11)

WAC 182-12-114 How do employees establish eligibility for PEBB benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Employing agencies must request the PEBB program's approval to include temporary training or emergency hours in determining eligibility.

For how the employer contribution toward insurance coverage is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as provided in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if he or she works an average of at least eighty hours per month and works for at

least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situation in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage ((~~and~~)), basic life, and basic long-term disability insurance coverage begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month of the season. A season is any recurring, cyclical period of work at a specific time of year that lasts three to eleven months.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that he or she will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria of (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward insurance coverage by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility under WAC 182-12-131(3). When a faculty works for more than one institution of higher education, the faculty must notify his or her employing agencies that he

or she works at more than one institution and may be eligible through stacking.

(c) **When PEBB ((~~benefits~~)) insurance coverage begins.**

(i) Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, ((~~these PEBB benefits~~)) then insurance coverage begins at the beginning of the second consecutive quarter/semester.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-12-116 Who is eligible to participate in the state's salary reduction plan? (1) Employees of state agencies are eligible to participate in the state's salary reduction plan provided they are eligible for PEBB benefits as ((~~defined~~)) described in WAC 182-12-114 and they elect to participate within the time frames described in WAC 182-08-197, 182-08-187, or 182-08-199.

(2) Employees of employer groups, as defined in WAC 182-12-109, are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-123 Dual enrollment is prohibited. Public employees benefits board (PEBB) health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals who have more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") are limited to one enrollment.

(2) An eligible employee may waive medical and enroll as a dependent on the coverage of his or her eligible spouse, eligible state registered domestic partner, or eligible parent as stated in WAC 182-12-128.

(3) Children eligible for medical and dental under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

(4) An employee who is eligible for the employer contribution ((~~to PEBB benefits~~)) towards insurance coverage due to employment in more than one PEBB-participating employing agency must choose to enroll under only one employing agency.

Exception: Faculty who stack to establish or maintain eligibility under WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-128 When may an employee waive ((~~health~~)) or enroll in medical plans ((~~enrollment~~))? Employees must enroll in dental, basic life and basic long-term disability insurance (unless the employing agency does not participate in these public employees benefits board (PEBB) insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage.

(1) Employees may waive enrollment in PEBB medical by submitting the ((~~appropriate~~)) required enrollment form to their employing agency during the following times:

(a) **When the employee becomes eligible:** Employees may waive medical when they become eligible for PEBB benefits. Employees must indicate they are waiving medical on the ((~~appropriate~~)) required enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** Employees may waive medical during the annual open enrollment if they submit the ((~~appropriate~~)) required enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee waives medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) During the annual open enrollment;

(b) During a special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the ((~~appropriate~~)) required forms, the PEBB program ((~~may~~)) will require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment.

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for ((~~either~~)) the employee, the employee's dependent, or both. Employees must provide evidence of the event that created the special open enrollment. Any one of the following events may create a special open enrollment:

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Employee or ((~~a~~)) an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee or an employee's dependent has a change in employment status that affects the employee's or employee's dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(d) Employee or an employee's dependent has a change in enrollment under another employer group plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Employee's dependent has a change in residence from outside of the United States to within the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Employee or an employee's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the employee or dependent loses eligibility for coverage under medicaid or CHIP~~)).

To waive or enroll during a special open enrollment, the employee must submit the ((~~appropriate~~)) required forms to ((~~their~~)) his or her employing agency no later than sixty days after the event that creates the special open enrollment.

Medical will be waived the end of the month following the later of the event date or the date the form is received. If the later day is the first of the month, medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, medical will be waived the first of the month in which the event occurs.

Enrollment in medical will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment in medical will begin the first of the month in which the event occurs.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-12-129 What happens when an employee moves from an eligible to an otherwise ineligible position or job due to a layoff? This section applies to employees employed by state agencies (as defined in this chapter), including benefits-eligible seasonal employees, and is intended to address situations where an employee moves from one position or job to another due to a layoff, as ((~~defined~~)) described in WAC 182-12-109. This section does not apply to employees with an anticipated end date.

If an employee moves from an eligible to an otherwise ineligible position due to layoff, the employee may retain his or her eligibility for the employer contribution toward insurance coverage for each month that the employee is in pay status for at least eight hours. To maintain eligibility using this section the employee must:

• Be hired into a position with a state agency within twenty-four months of the original eligible position ending; and

• Upon hire, notify the employing state agency that he or she is potentially eligible to use this section.

This section ceases to apply if the employee is employed in a position eligible for public employees benefits board (PEBB) benefits under WAC 182-12-114 within twenty-four months of leaving the original position.

After the twenty-fourth month, the employee must reestablish eligibility under WAC 182-12-114.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-131 How do eligible employees maintain the employer contribution toward insurance coverage? The employer contribution toward insurance coverage

begins on the day that public employees benefits board (PEBB) benefits begin under WAC 182-12-114. This section describes under what circumstances an employee maintains eligibility for the employer contribution toward ((~~PEBB benefits~~)) insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, an employee who has established eligibility for benefits under WAC 182-12-114 is eligible for the employer contribution each month in which he or she is in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of less than nine months is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. The employer contribution toward ((~~PEBB benefits~~)) insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of nine months or more is eligible for the employer contribution:

(i) In any month of his or her season in which he or she is in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked.

(3) **Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work the entire instructional year or equivalent nine-month period (eligible under WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible under WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which the employee works half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment. If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to ((~~PEBB benefits~~)) insurance coverage. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty who lose eligibility for the employer contribution: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) **Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.**

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

(5) **Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff** maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

(6) **Employees who are in pay status less than eight hours in a month.** Unless otherwise indicated in this section, when there is a month in which an employee is not in pay status for at least eight hours, the employee:

(a) Loses eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) **The employer contribution ((~~to PEBB~~)) toward insurance coverage ends** in any one of these circumstances for all employees:

(a) When the employee fails to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When the employee moves to a position that is not anticipated to be eligible for benefits under WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB medical, dental and life insurance for an employee, spouse, state registered domestic partner, or child ceases at 12:00 midnight, the last day of the month in which the employee is eligible for the employer contribution under this section.

Exception: If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(8) **Options for continuation coverage by self-paying.** During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the health care authority (HCA). These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-133 What options for continuation coverage are available to employees on certain types of leave or whose work ends due to a layoff? Employees who have established eligibility for public employees benefits board (PEBB) benefits under WAC 182-12-114 have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the health care authority (HCA) during temporary or permanent loss of the employer contribution toward insurance coverage.

(1) When an employee is no longer eligible for the employer contribution toward ((~~PEBB benefits~~)) insurance coverage due to an event described in (a) through (f) of this subsection, insurance coverage may be continued by self-paying the full premium set by the HCA, with no contribution from the employer. Employees may self-pay for a maximum of twenty-nine months. The employee must pay the premium amounts for insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid. Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may continue either basic or both basic and optional long-term disability insurance. Employees in the following circumstances qualify to continue coverage under this subsection:

(a) The employee is on authorized leave without pay;

(b) The employee is on approved educational leave;

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA);

(e) The employee's employment ends due to a layoff as defined in WAC 182-12-109; or

(f) The employee is applying for disability retirement.

(2) The number of months that an employee self-pays the premium while eligible under subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). An employee who is no longer eligible for continuation coverage as described in subsection (1) of this section but who has not used the maximum number of months allowed under COBRA may continue medical and dental for the remaining difference in months by self-paying the premium under COBRA as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-146 What options for continuation coverage are available to subscribers and dependents who become eligible under COBRA? An enrollee can continue health plan coverage by self-paying the full premium set by the health care authority (HCA) in accordance with Consolidated Omnibus Budget Reconciliation Act (COBRA) regulations in the following circumstances:

(1) An employee or an employee's dependent who loses eligibility for the employer contribution toward ((~~public employees benefits board (PEBB)~~)) insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage in WAC 182-12-133, 182-12-138, 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue medical, dental, or both for the remaining difference in months.

(3) A retired or disabled employee who loses eligibility for PEBB retiree insurance because an employer group, with the exception of school districts and educational service districts, ceases participation in ((~~PEBB~~)) insurance coverage may continue medical, dental, or both.

(4) A retired or disabled employee, or a dependent of a retired or disabled employee, who is no longer eligible to continue coverage under WAC 182-12-171 may continue medical, dental, or both.

(5) An individual licensee or vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5)(a) may continue enrollment in public employees benefits board (PEBB) medical for the maximum number of months allowed under COBRA as described in this section.

An individual licensee or vendor is not eligible for PEBB retiree insurance coverage.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-171 When are retiring employees eligible to enroll in retiree insurance? (1) **Procedural requirements.** Retiring employees must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) The employee must submit the ((~~appropriate~~)) required forms to enroll or defer insurance coverage within sixty days after the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of other coverage.

An employee who defers public employees benefits board (PEBB) health plan enrollment when enrolled as an employee or dependent in a PEBB or Washington state K-12 school district sponsored health plan as described in WAC 182-12-200(2) is not required to submit forms to defer health plan enrollment, but is required to submit forms if the employee is eligible and elects to enroll in optional PEBB retiree life insurance coverage as described in WAC 182-12-209.

Exception: The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who do not enroll in ((~~a public employees benefits board (~~))PEBB((~~)~~)) health plan at retirement are only eligible to enroll at a later date if they have deferred enrollment and maintained continuous coverage when enrolled as an employee or dependent in a PEBB or Washington state K-12 school district sponsored health plan as ((~~identified~~)) described in WAC 182-12-200, or maintained continuous coverage as described in WAC 182-12-205 ((~~and maintained comprehensive employer-sponsored medical as defined in WAC 182-12-109~~)).

(b) The 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, he or she must enroll and maintain enrollment in medicare.

Note: If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in PEBB retiree insurance. The enrollee may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(2) **Eligibility requirements.** Eligible employees (as ((~~defined~~)) described in WAC 182-12-114 and 182-12-131) 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 the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirement 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 PEBB appeals committee to determine eligibility (see WAC 182-16-032). Employees must meet 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 the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan((~~,~~));

• Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(20)), are eligible if they meet their Plan 3 retirement plan's eligibility criteria when PEBB employee insurance or COBRA 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 retirement eligibility criteria, or are at least age fifty-five with ten years of state service((~~,~~));

• Employees not retiring under a Washington state-sponsored retirement plan must meet the same age and years of service as if the person had been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment((~~,~~)); or

• Employees who retire from a local government or tribal government that participates in ((~~PEBB~~)) insurance coverage for their employees are eligible to continue PEBB insurance coverage as retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government 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) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(c) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB ((~~benefits~~)) insurance coverage.** 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 the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan or the employee enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(20)), are eligible if they meet their Plan 3 retirement plan's eligibility criteria when employer paid or COBRA coverage ends.

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 annual open enrollment period for the year beginning January 1, 1995.

(3) **Elected and full-time appointed officials of the legislative and executive branches.** Employees who are elected and full-time appointed state officials (as defined under WAC 182-12-114(4)) 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~~)) of subsection (1) of this section.

(4) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and firefighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teachers' retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under the PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-12-200 May a retiree who is enrolled as ((~~a~~)) an employee or dependent in a public employees benefits board (PEBB) health plan or a Washington state K-12 school district sponsored health plan defer enrollment in a PEBB retiree health plan? (1) If a retiree defers enrollment in a public employees benefits board (PEBB) health plan, they also defer enrollment for all eligible dependents.

(2) 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 at or after retirement. Retirees who defer enrollment in medical cannot remain enrolled in dental. Retirees who defer may later enroll themselves and their dependents in PEBB retiree medical, or medical and dental, if they provide evidence of continuous enrollment in a PEBB or K-12 school district sponsored medical plan. Continuous enrollment must be from the date the retiree deferred enrollment in retiree insurance. Retirees may enroll:

((~~(1)~~)) (a) During any PEBB annual open enrollment period. (Enrollment in the PEBB health plan will begin January 1st after the annual open enrollment period.); or

((~~(2)~~)) (b) No later than sixty days after enrollment in the PEBB or K-12 school district sponsored medical plan 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.)

Note: PEBB retiree health plan enrollment is automatically deferred if a retiree becomes newly eligible for PEBB benefits as an employee as described in WAC 182-12-114 and enrolls in a PEBB medical plan as described in WAC 182-08-197(1) or 182-08-187(1).

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-205 May a retiree defer enrollment in a public employees benefits board (PEBB) health plan at or after retirement? Except as stated in subsection (1)(c) of this section, if a retiree((~~s~~)) defers enrollment in a public employees benefits board (PEBB) health plan, they also defer enrollment for all eligible dependents. ((~~Retirees may not defer their retiree term life insurance, even if they have other life insurance, except as allowed in WAC 182-12-209(3).~~))

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other ((~~comprehensive employer-sponsored medical~~)) coverage as ((~~identified below~~)) described in this subsection:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as ((~~defined~~)) described in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, retirees who are not eligible for Parts A and B of medicare may defer enrollment if they are enrolled in exchange coverage.

(2) To defer health plan enrollment, the retiree must submit the ((~~appropriate~~)) required forms to the PEBB program requesting to defer. The PEBB program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may later enroll themselves and their dependents in ((~~a~~)) PEBB ((~~health plan~~)) retiree medical, or medical and dental, as follows:

(a) Retirees who defer while enrolled in comprehensive employer-sponsored medical may enroll in a PEBB health plan by submitting the ((~~appropriate~~)) required forms and evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after their comprehensive employer-sponsored medical ends. PEBB health plan coverage begins the first day of the month after the comprehensive employer-sponsored medical ends.

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the ((~~appropriate~~)) required forms and evidence of continuous enrollment in a federal retiree medical plan to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after the federal retiree medical ends. PEBB health plan coverage begins the first day of the month after the federal retiree medical ends.

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as ((~~defined~~)) described in this chapter may enroll in a PEBB health plan by submitting the ((~~appropriate~~)) required forms and evidence of continuous enrollment in creditable coverage to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after their medicaid coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends.

(d) Retirees who defer enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in exchange coverage to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after exchange coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

(e) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the ((~~department of social and health services~~)) authority has determined it is more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-12-208 What are the requirements regarding enrollment in retiree dental? (1) ((~~If~~)) A subscriber ((~~is~~)) or dependent enrolled in retiree insurance coverage, ((~~he or she~~)) may not enroll in dental unless he or she is also enrolled in medical.

(2) A subscriber enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in public employees benefits board (PEBB) life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit the ((~~appropriate~~)) required forms to the PEBB program no later than sixty days after the date their PEBB employee life insurance ends.

(1) 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.

(2) Retirees may not defer enrollment in retiree term life insurance, except as allowed in subsection (3)(b) of this section.

(3) If a retiree returns to active employment status and becomes eligible for the employer contribution toward PEBB employee life insurance, he or she may choose:

(a) To continue to self-pay premiums and keep retiree life insurance in place during the period he or she is eligible for employee life insurance; or

(b) To stop self-paying premiums during the period he or she is eligible for employee life insurance and resume self-paying premiums for retiree life insurance when he or she is no longer eligible for the employer contribution toward PEBB employee life insurance.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-12-211 If department of retirement systems or the appropriate higher education authority makes a formal determination of retroactive eligibility, may the retiree enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) When the Washington state department of retirement systems (DRS), or the appropriate higher education authority, makes a formal determination that a person is retroactively eligible for a pension benefit((~~s~~)) or a supplemental retirement plan benefit under the higher education HERP plan, that person may apply for enrollment in a public employees benefits board (PEBB) health plan only if the application is made within sixty days after the date of written notice from DRS or from the appropriate higher education authority. Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described in WAC 182-12-171(2).

(2) All premiums are due from the date of retirement eligibility ((~~established by DRS~~)) as stated in the written notice or the date of the ((~~DRS decision letter~~)) written notice described in subsection (1) of this section, at the option of the retiree, must be sent with the application to the PEBB program.

(3) The director may make an exception to the date PEBB retiree insurance coverage commences or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in health plans administered by the public employees benefits board (PEBB) program within health care authority (HCA).

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner; ((~~and~~))

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26.101.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on ((~~their~~)) his or her behalf) must submit the ((~~appropriate~~)) required forms ((~~(~~)) to the PEBB program to either enroll or defer enrollment in a PEBB health plan((~~) to PEBB program~~)) as described in subsection (7) of this section no later than one hundred eighty days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in a PEBB health plan may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose ((~~appropriate~~)) required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the ((~~appropriate~~)) required forms (for example, if the PEBB program receives the ((~~appropriate~~)) required forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB program receives the ((~~appropriate~~)) required forms.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in ((~~comprehensive employer-sponsored medical~~)) other coverage as described in WAC 182-12-205(1).

(ii) Survivors may enroll in a PEBB health plan when they lose comprehensive employer-sponsored medical. Survivors will need to provide evidence that they were continuously enrolled in comprehensive employer-sponsored medical when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in a PEBB health plan if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in ((~~comprehensive employer-sponsored medical through an employer~~)) coverage during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-260 Who are eligible dependents? To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The public employees benefits board (PEBB) program verifies the eligibility of all dependents and reserves the right to request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility. The PEBB program will not enroll or reenroll dependents into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber must notify the PEBB program, in writing, no later than sixty days after the date his or her dependent is no longer eligible under this section. See WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from coverage.

The following are eligible as dependents:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) Domestic partner.

(a) Effective January 1, 2010, a state registered domestic partner, as defined in RCW 26.60.020(1).

(b) A domestic partner who was qualified under PEBB eligibility criteria as a domestic partner before January 1, 2010, and was continuously enrolled under the subscriber in a PEBB health plan or life insurance.

(c) Former state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are eligible up to age twenty-six except as described in (i) of this subsection. Children are defined as the subscriber's ((~~biological~~)):

(a) Children as defined in RCW 26.26.101 establishment of parent-child relationship;

(b) Biological children, where parental rights have not been terminated;

(c) Stepchildren((~~,~~)). The stepchild's relationship to a subscriber (and eligibility as a PEBB dependent) ends, for purposes of this rule, on the same date the subscriber's legal relationship with the spouse or domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Legally adopted children((~~,~~));

(e) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child((~~,~~));

(f) Children of the subscriber's state registered domestic partner((~~, or~~));

(g) Children specified in a court order or divorce decree((~~. In addition, children include~~));

(h) Extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program((~~.~~

~~Eligible children include:~~

~~(a) Children up to age twenty-six.~~

~~(b) Effective January 1, 2011, children of any age with a disability, mental illness, or intellectual or other developmental disability who are incapable of self-support, provided such condition occurs before age twenty-six.~~)); and

(i) Children of any age with a developmental disability or physical handicap that renders the child incapable of self-sustaining employment and chiefly dependent upon the employee for support and maintenance provided such condition occurs before the age twenty-six:

(i) The subscriber must provide evidence of the disability and evidence that the condition occurred before age twenty-six((~~.~~));

(ii) The subscriber must notify the PEBB program, in writing, no later than sixty days after the date that a child age twenty-six or older no longer qualifies under this subsection((~~.~~

~~For example, children~~));

(iii) A child with a developmental disability or physical handicap who becomes self-supporting ((~~are~~)) is not eligible under this subsection as of the last day of the month in which ((~~they~~)) he or she becomes capable of self-support((~~.~~

~~(iii) Children~~));

(iv) A child with a developmental disability or physical handicap age twenty-six and older who becomes capable of

self-support ((~~do~~)) does not regain eligibility under ((~~(b)~~)) (i) of this subsection if ((~~they~~)) he or she later becomes incapable of self-support((~~.~~

~~(iv)~~)).

(v) The PEBB program will periodically certify the eligibility of ((~~children~~)) a dependent child with ((~~disabilities periodically~~)) a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in ((~~PEBB~~)) insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in health plan coverage.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 (1)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) insurance coverage. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. The subscriber must satisfy the enrollment requirements as described in subsection (4) of this section.

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent** meets the eligibility criteria in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency. All other subscribers must notify the PEBB program. Consequences for not submitting notice within sixty days of any dependent ceasing to be eligible may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section.

(c) **Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's coverage prospectively.

(3) **Special open enrollment.** Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to and be consistent with the event that creates the special open enrollment for ((~~either~~)) the subscriber, the subscriber's dependents, or both.

• Health plan coverage will begin the first of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day.

• Enrollment of extended dependents or dependents with a disability will be the first day of the month following eligibility certification.

• Dependents will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

• If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs.

Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insur-

ance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(d) Subscriber or a subscriber's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Subscriber's dependent has a change in residence from outside of the United States to within the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the subscriber or dependent loses eligibility for coverage under medicaid or CHIP.~~))

(4) **Enrollment requirements. Subscribers must submit the ((~~appropriate~~)) required enrollment forms within the time frames described in this subsection.** Employees submit the ((~~appropriate~~)) required forms to their employing agency. All other subscribers submit the ((~~appropriate~~)) required forms to the PEBB program. In addition to the ((~~appropriate~~)) required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll ((~~their~~)) his or her eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the ((~~appropriate~~)) required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the ((~~appropriate~~)) required forms no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the ((~~appropriate~~)) required enrollment forms no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the subscriber must submit the ((~~appropriate~~)) required enrollment form no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the subscriber must submit the ((~~appropriate~~)) required form(s) no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the ((~~appropriate~~)) required forms no later than sixty days after the event that creates the special open enrollment.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-263 National Medical Support Notice (NMSN) or court order. When a National Medical Support Notice (NMSN) or court order requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(1) The subscriber may enroll ((~~the~~)) his or her dependent child and request changes to his or her health plan coverage as described under subsection (3) of this section. Employees submit the ((~~appropriate~~)) required forms to their employing agency. All other subscribers submit the ((~~appropriate~~)) required forms to the PEBB program.

(2) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN or court order, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to subsection (3) of this section upon request of:

(a) The child's other parent; or

(b) Child support enforcement program.

(3) Changes to health plan coverage or enrollment are allowed as directed by the NMSN or court order:

(a) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN or court order;

(b) An employee who has waived medical under WAC 182-12-128 will be enrolled in medical coverage as directed by the NMSN or court order, in order to enroll the dependent;

(c) The subscriber's selected health plan will be changed if directed by the NMSN or court order;

(d) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN or court order.

(4) Health plan enrollment will begin the first day of the month following receipt of the NMSN or court order. If the NMSN or court order requires a change from the subscriber's selected health plan, the change will begin the first day of the month following receipt of the NMSN or court order.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-265 What options for continuing health plan enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The

dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll as a survivor under public employees benefits board (PEBB) retiree insurance coverage. An eligible survivor must submit the ((~~appropriate~~)) required forms to enroll or defer enrollment in a PEBB medical plan no later than sixty days after the date of the employee's or retiree's death, except as allowed in WAC 182-12-200(2) when deferring enrollment in a public employees benefits board (PEBB) retiree health plan when enrolled as an employee or dependent in a PEBB or Washington state K-12 school district sponsored health plan.

(1) An employee's spouse, state registered domestic partner or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under retiree 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 state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility under WAC 182-12-260.

Note: If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, the dependent is not eligible to enroll as a survivor under retiree insurance coverage. However, the dependent may continue health plan enrollment as described in WAC 182-12-146.

(2) A retiree's spouse, state registered domestic partner or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under retiree insurance.

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility under WAC 182-12-260.

(c) If a spouse, state registered domestic partner or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the dependent is eligible to enroll or defer enrollment in a PEBB health plan as a survivor under retiree insurance. The dependent must submit the ((~~appropriate~~)) required form(s) to enroll or defer PEBB health plan enrollment no later than sixty days after the retiree's death. A deferral form is not required if the spouse, state registered domestic partner, or child is continuously enrolled in a PEBB or Washington state K-12 school district sponsored health plan as described in WAC 182-12-200(2). To enroll in a PEBB health plan, the dependent must provide evidence of continuous enrollment in medical coverage from the most recent open enrollment for which the dependent was not enrolled in a PEBB medical plan prior to the retiree's death.

(3) The spouse, state registered domestic partner, or child of a deceased school district or educational service district employee is eligible to enroll or defer enrollment in a health plan as a survivor under PEBB retiree insurance coverage at the time of the employee's death provided the employee died on or after October 1, 1993. The dependent must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW and submit the ((~~appropriate~~)) required form to enroll or defer enrollment in a PEBB medical plan no later than sixty days after the date of the employee's death. A deferral form is not required if the spouse, state registered domestic partner, or child is continuously enrolled in a PEBB or Washington state K-12 school district sponsored health plan as described in WAC 182-12-200(2).

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility under WAC 182-12-260.

(4) If a premium payment received by the authority is sufficient to maintain health plan enrollment after the employee's or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the dependent's enrollment ended due to the death of the employee or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium.

(5) In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan ((~~under~~)) when continuously enrolled as an employee or dependent in a PEBB or Washington state K-12 school district sponsored health plan as described in WAC 182-12-200 ((~~and~~)), or when continuously enrolled in other coverage as described in WAC 182-12-205.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Authority" or "HCA" means the health care authority.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a plan offering medical coverage or dental ((~~plan~~)) coverage, or both developed by the public employees benefits board and provided by a con-

tracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

WSR 13-18-062
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed September 3, 2013, 10:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-126.

Title of Rule and Other Identifying Information: WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on October 14, 2013, at 1:00 p.m.

Date of Intended Adoption: November 5, 2013.

Submit Written Comments to: Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Alicia.Curry@lni.wa.gov, fax (360) 902-5292, by 5:00 p.m. on October 14, 2013.

Assistance for Persons with Disabilities: Contact Alicia Curry by October 4, 2013, at Alicia.Curry@lni.wa.gov or (360) 902-6244.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to amend language in WAC 296-46B-920, pertaining to scope of work requirements for load bank testing and preventative maintenance. This rule making will amend the 07-scope of work requirements for electrical licensing to allow 07-level nonresidential maintenance specialty contractors and electricians the ability to perform installation and connections of temporary electrical conductors and equipment for the purpose of load testing. Currently, the rule requires this type of work to be performed by a 01-general electrical contractor, using 01-general journey level electricians.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: Chapter 19.28 RCW.

Statute Being Implemented: Chapter 19.28 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. L&I is exempt from preparing a small business economic impact statement under RCW 19.85.030 (1)(a), since the proposed rule would not impose any costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(a), since the proposed rule would not impose any costs on businesses.

September 3, 2013
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work. (1) **General electrical (01):** A general electrical license and/or certificate encompasses all phases and all types of electrical and telecommunications installations and minor plumbing under RCW 18.106.150. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater).

Specialties.

(2) All specialties listed in this subsection may perform the electrical work described within their specific specialty as allowed by the occupancy and location described within the specialty's scope of work. Except for residential (02), the scope of work for these specialties does not include plumbing work regulated under chapter 18.106 RCW. See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater). **Specialty** (limited) electrical licenses and/or certificates are as follows:

(a) **Residential (02):** Limited to the telecommunications, low voltage, and line voltage wiring of one- and two-family dwellings, or multifamily dwellings not exceeding three stories above grade. All wiring is limited to nonmetallic sheathed cable, except for services and/or feeders, exposed installations where physical protection is required, and for wiring buried below grade.

(i) This specialty also includes the wiring for ancillary structures such as, but not limited to: Appliances, equipment, swimming pools, septic pumping systems, domestic water systems, limited energy systems (e.g., doorbells, intercoms, fire alarm, burglar alarm, energy control, HVAC/refrigeration, etc.), multifamily complex offices/garages, site lighting when supplied from the residence or ancillary structure, and other structures directly associated with the functionality of the residential units.

(ii) This specialty does not include wiring occupancies defined in WAC 296-46B-900(1), or commercial occupancies such as: Motels, hotels, offices, assisted living facilities, or stores.

(iii) See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty.

(b) **Pump and irrigation (03):** Limited to the electrical connection of circuits, feeders, controls, low voltage, related telecommunications, and services to supply: Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls, and irrigation water pumps, circular irrigating system's pumps and pump houses.

This specialty may also perform the work defined in (c) of this subsection.

Also see RCW 18.106.010 (10)(c).

(c) **Domestic pump (03A):** Limited to the extension of a branch circuit, which is supplied and installed by others, to signaling circuits, motor control circuits, motor control devices, and pumps which do not exceed 7 1/2 horsepower at 250 volts AC single phase input power, regardless of motor controller output or motor voltage/phase, used in residential potable water or residential sewage disposal systems. Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls.

Also see RCW 18.106.010 (10)(c).

(d) **Signs (04):** Limited to placement and connection of signs and outline lighting, the electrical supply, related telecommunications, controls and associated circuit extensions thereto; and the installation of a maximum 60 ampere, 120/240 volt single phase service to supply power to a remote sign only. This specialty may service, maintain, or repair exterior luminaires that are mounted on a pole or other structure with like-in-kind components.

(i) Electrical licensing/certification is not required to:

(A) Clean the nonelectrical parts of an electric sign;

(B) Form or pour a concrete pole base used to support a sign;

(C) Operate machinery used to assist an electrician in mounting an electric sign or sign supporting pole; or

(D) Assemble the structural parts of a billboard.

(ii) Electrical licensing/certification is required to: Install, modify, or maintain a sign, sign supporting pole, sign face, sign ballast, lamp socket, lamp holder, disconnect switch, or any other part of a listed electric sign.

(e) **Limited energy system (06):** Limited to the installation of signaling and power limited circuits and related equipment. This specialty is restricted to low-voltage circuits. This specialty includes the installation of telecommunications, HVAC/refrigeration low-voltage wiring, fire protection signaling systems, intrusion alarms, energy management and control systems, industrial and automation control systems, lighting control systems, commercial and residential amplified sound, public address systems, and such similar low-energy circuits and equipment in all occupancies and locations.

(i) For the purposes of this section, when a line voltage connection is removed and reconnected to a replacement component located inside the control cabinet, the replacement must be like-in-kind or replaced using the equipment manufacturer's authorized replacement component. The line voltage circuit is limited to 120 volts 20 amps maximum and must have a means of disconnect.

(ii) The limited energy systems (06) specialty may repair or replace line voltage connections terminated inside the cabinet to power supplies internal to the low voltage equipment provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the circuit.

(iii) The limited energy systems (06) specialty may not replace or modify the line voltage circuit or cabling or alter the means of connection of the line voltage circuit to the power supply or to the control cabinet.

Limited energy electrical contractors may perform all telecommunications work under their specialty **(06)** electrical license and administrator's certificate.

(f) **HVAC/refrigeration systems:**

(i) See WAC 296-46B-100 for specific HVAC/refrigeration definitions.

(ii) For the purposes of this section when a component is replaced, the replacement must be like-in-kind or made using the equipment manufacturer's authorized replacement component.

(iii) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may:

(A) Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all residential occupancies;

(B) Install, repair, replace, and maintain line voltage components within HVAC/refrigeration equipment. Such line voltage components include product illumination luminaires installed within and powered from the HVAC/refrigeration system (e.g., reach-in beverage coolers, frozen food cases, produce cases, etc.) and new or replaced factory authorized accessories such as internally mounted outlets;

(C) Repair, replace, or maintain the internal components of the HVAC/refrigeration equipment disconnecting means or controller so long as the disconnecting means or controller is not located within a motor control center or panelboard;

(D) Install, repair, replace, and maintain short sections of raceway to provide physical protection for low-voltage cables. For the purposes of this section a short section cannot mechanically interconnect two devices, junction boxes, or other equipment or components; and

(E) Repair, replace, or maintain line voltage flexible supply whips not over six feet in length, provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the whip. There is no limitation on the whip raceway method (e.g., metallic replaced by nonmetallic).

(iv) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may not:

(A) Install line voltage controllers or disconnect switches external to HVAC/refrigeration equipment;

(B) Install, repair, replace, or maintain:

• Integrated building control systems, other than HVAC/refrigeration systems;

• Single stand-alone line voltage equipment or components (e.g., heat cable, wall heaters, radiant panel heaters, baseboard heaters, contactors, motor starters, and similar equipment) unless the equipment or component:

Is exclusively controlled by the HVAC/refrigeration system and requires the additional external connection to a mechanical system(s) (e.g., connection to water piping, gas piping, refrigerant system, ducting for the HVAC/refrigeration system, gas fireplace flume, ventilating systems, etc. (i.e., as in the ducting connection to a bathroom fan)). The external connection of the equipment/component to the mechanical system must be required as an integral component allowing the operation of the HVAC/refrigeration system; or

Contains a HVAC/refrigeration mechanical system(s) (e.g., water piping, gas piping, refrigerant system, etc.) within the equipment (e.g., "through-the-wall" air conditioning units, self-contained refrigeration equipment, etc.);

• Luminaires that serve as a building or structure lighting source, even if mechanically connected to a HVAC/refrigeration system (e.g., troffer luminaire used as a return air device, lighting within a walk-in cooler/freezer used for personnel illumination);

• Raceway/conduit systems;

• Line voltage: Service, feeder, or branch circuit conductors. However, if a structure's feeder/branch circuit supplies HVAC/refrigeration equipment containing a supplementary overcurrent protection device(s), this specialty may install the conductors from the supplementary overcurrent device(s) to the supplemental HVAC/refrigeration equipment if the supplementary overcurrent device and the HVAC/refrigeration equipment being supplied are located within sight of each other; or

• Panelboards, switchboards, or motor control centers external to HVAC/refrigeration system.

(v) HVAC/refrigeration **(06A):**

(A) This specialty is not limited by voltage, phase, or amperage.

(B) No unsupervised electrical trainee can install, repair, replace, or maintain any part of a HVAC/refrigeration system that contains any circuit rated over 600 volts whether the circuit is energized or deenergized.

(C) This specialty may:

• Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies:

That have no more than three stories on/above grade; or

Regardless of the number of stories above grade if the installation:

• Does not pass between stories;

• Is made in a previously occupied and wired space; and

• Is restricted to the HVAC/refrigeration system;

• Repair, replace, and maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all occupancies regardless of the number of stories on/above grade.

• Install a bonding conductor for metal gas piping to an existing accessible grounding electrode conductor or grounding electrode only when terminations can be made external to electrical panelboards, switchboards, or other distribution equipment.

(D) This specialty may not install, repair, replace, or maintain: Any electrical wiring governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations) located outside the HVAC/refrigeration equipment.

(vi) HVAC/refrigeration - Restricted **(06B):**

(A) This specialty may not perform any electrical work where the primary electrical power connection to the HVAC/refrigeration system exceeds: 250 volts, single phase, or 120 amps.

(B) This specialty may install, repair, replace, or maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies that have no more than three stories on/above grade.

(C) This specialty may not install, repair, replace, or maintain:

• The allowed telecommunications/low-voltage HVAC/refrigeration wiring in a conduit/raceway system; or

• Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(g) **Nonresidential maintenance (07):** Limited to maintenance, repair and replacement of like-in-kind existing electrical equipment and conductors. This specialty does not include maintenance activities in residential dwellings defined in (a) of this subsection for the purposes of accumulating training experience toward qualification for the residential **(02)** specialty electrician examination.

(i) This specialty includes the installation and connections of temporary conductors and equipment for the purpose of load testing, not to exceed 600 volts.

(ii) This specialty may perform the work defined in (h), (i), (j), (k), and (l) of this subsection.

(h) **Nonresidential lighting maintenance and lighting retrofit (07A):** Limited to working within the housing of existing nonresidential luminaires for work related to repair, service, maintenance of luminaires and installation of energy efficiency lighting retrofit upgrades. This specialty includes replacement of lamps, ballasts, sockets and the installation of listed lighting retrofit reflectors and kits. All work is limited to the luminaire body, except remote located ballasts may be replaced or retrofitted with approved products. This specialty does not include installing new luminaires or branch circuits; moving or relocating existing luminaires; or altering existing branch circuits.

(i) **Residential maintenance (07B):** This specialty is limited to residential dwellings as defined in WAC 296-46B-920 (2)(a), multistory dwelling structures with no commercial facilities, and the interior of dwelling units in multistory structures with commercial facilities. This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901.

This specialty is limited to equipment and circuits to a maximum of 250 volts, 60 amperes, and single phase maximum.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit or whip.

For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(j) **Restricted nonresidential maintenance (07C):** This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901 except for the replacement or repair of circuit breakers.

This specialty is limited to equipment and circuits to a maximum of 277 volts and 20 amperes for lighting branch circuits only and/or maximum 250 volts and 60 amperes for other circuits.

The replacement of luminaires is limited to in-place replacement required by failure of the luminaire to operate. Luminaires installed in suspended lay-in tile ceilings may be relocated providing: The original field installed luminaire supply whip is not extended or relocated to a new supply point; or if a manufactured wiring assembly supplies luminaire power, a luminaire may be relocated no more than eight feet providing the manufactured wiring assembly circuiting is not changed.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit. For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip.

This specialty may perform the work defined in (h) and (i) of this subsection.

This specialty cannot perform any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(k) **Appliance repair (07D):** Servicing, maintaining, repairing, or replacing household appliances, small commercial/industrial appliances, and other small electrical utilization equipment.

(i) For the purposes of this subsection:

(A) The appliance or electrical utilization equipment must be self-contained and built to standardized sizes or types. The appliance/equipment must be connected as a single unit to a single source of electrical power limited to a maximum of 250 volts, 60 amperes, single phase.

(B) Appliances and electrical utilization equipment include, but are not limited to: Ovens, office equipment, vehicle repair equipment, commercial kitchen equipment, self-contained hot tubs and spas, grinders, and scales.

(C) Appliances and utilization equipment do not include systems and equipment such as: Alarm/energy management/similar systems, luminaires, furnaces/heaters/air conditioners/heat pumps, sewage disposal equipment, door/gate/similar equipment, or individual components installed so as to create a system (e.g., pumps, switches, controllers, etc.).

(ii) This specialty includes:

(A) The in-place like-in-kind replacement of the appliance or equipment if the same unmodified electrical circuit is used to supply the equipment being replaced. This specialty also includes the like-in-kind replacement of electrical components within the appliance or equipment;

(B) The disconnection and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit; and

(C) The installation of an outlet box and outlet at an existing appliance or equipment location when converting the appliance from a permanent electrical connection to a plug and cord connection. Other than the installation of the outlet box and outlet, there can be no modification to the existing branch circuit supplying the appliance or equipment.

(iii) This specialty does not include:

(A) The installation, repair, or modification of branch circuits conductors, services, feeders, panelboards, disconnect switches, or raceway/conductor systems interconnecting

multiple appliances, equipment, or other electrical components.

(B) Any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(C) Any plumbing work regulated under chapter 18.106 RCW.

(l) **Equipment repair (07E):** Servicing, maintaining, repairing, or replacing utilization equipment.

See RCW 19.28.095 for the equipment repair scope of work and definitions. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(m) **Telecommunications (09):** Limited to the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems.

(i) This specialty includes:

(A) Installation of open wiring systems of telecommunications cables.

(B) Surface nonmetallic raceways designated and used exclusively for telecommunications.

(C) Optical fiber innerduct raceway.

(D) Underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building.

(E) Incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(F) Audio or paging systems where the amplification is integrated into the telephone system equipment.

(G) Audio or paging systems where the amplification is provided by equipment listed as an accessory to the telephone system equipment and requires the telephone system for the audio or paging system to function.

(H) Closed circuit video monitoring systems if there is no integration of line or low-voltage controls for cameras and equipment. Remote controlled cameras and equipment are considered (intrusion) security systems and must be installed by appropriately licensed electrical contractors and certified electricians.

(I) Customer satellite and conventional antenna systems receiving a telecommunications service provider's signal. All receiving equipment is on the customer side of the telecommunications network demarcation point.

(ii) This specialty does not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting control systems, and stand-alone amplified sound or public address systems. Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment. Horizontal cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor.

(n) **Door, gate, and similar systems (10):** This specialty may install, service, maintain, repair, or replace door/gate/similar systems electrical operator wiring and equipment.

(i) For the purposes of this subsection, door/gate/similar systems electrical operator systems include electric gates, doors, windows, awnings, movable partitions, curtains and similar systems. These systems include, but are not limited to: Electric gate/door/similar systems operators, control push buttons, key switches, key pads, pull cords, air and electric treadle, air and electric sensing edges, coil cords, take-up reels, clocks, photo electric cells, loop detectors, motion detectors, remote radio and receivers, antenna, timers, lockout switches, stand-alone release device with smoke detection, strobe light, annunciator, control panels, wiring and termination of conductors.

(ii) This specialty includes:

(A) Low-voltage, NEC Class 2, door/gate/similar systems electrical operator systems where the door/gate/similar systems electrical operator system is not connected to other systems.

(B) Branch circuits originating in a listed door/gate/similar systems electric operator control panel that supplies only door/gate/similar systems system components providing: The branch circuit does not exceed 600 volts, 20 amperes and the component is within sight of the listed door/gate/similar systems electric operator control panel.

(C) Reconnection of line voltage power to a listed door/gate/similar systems electric operator control panel is permitted provided:

• There are no modifications to the characteristics of the branch circuit/feeder;

• The circuit/feeder does not exceed 600 volts, 20 amperes; and

• The conductor or conduit extending from the branch circuit/feeder disconnecting means or junction box does not exceed six feet in length.

(iii) This specialty does not include any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty may not install, repair, or replace branch circuit (line voltage) conductors, services, feeders, panelboards, or disconnect switches supplying the door/gate/similar systems electric operator control panel.

(3) A specialty electrical contractor, other than the **(06)** limited energy specialty electrical contractor, may only perform telecommunications work within the equipment or occupancy limitations of their specialty electrical contractor's license. Any other telecommunications work requires a telecommunications contractor's license.

WSR 13-18-063
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed September 3, 2013, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-075.

Title of Rule and Other Identifying Information: Chapter 296-96 WAC, Safety regulations and fees for all elevators, dumbwaiters, escalators.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on October 14, 2013, at 2:00 p.m.

Date of Intended Adoption: November 5, 2013.

Submit Written Comments to: Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Alicia.Curry@Lni.wa.gov, fax (360) 902-5292, by 5 p.m. on October 14, 2013.

Assistance for Persons with Disabilities: Contact Alicia Curry by October 4, 2013, at alicia.curry@Lni.wa.gov or (360) 902-6244.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The elevator program reviews their rules for additions and revisions on a regular basis to ensure the rules are consistent with the national conveyance safety standards and industry practice.

The rule making will:

- Adopt the current national conveyance safety standards for elevators and escalators, platform lifts and chair lifts, belt man lifts, and personnel hoists. It is critical the program adopt the national safety standards to ensure Washington is consistent with other states and that the same safety standards are met by elevator mechanics, manufacturers, architects, and engineers who work in multiple states;
- Amend language for consistency and to clarify statutory requirements;
- Adopt proposals requested and supported by stakeholders, such as requiring withdraw notices to be submitted to the department, if a mechanic leaves to work in another state and plans to return to work in the state of Washington;
- Amend the rules for clarification and safety; and
- Amend language for general housekeeping, grammatical and reference corrections to bring the rules up to date.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: Chapter 70.87 RCW.

Statute Being Implemented: Chapter 70.87 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Day, Tumwater, Washington, (360) 902-6128; Implementation and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt from the small business economic impact statement requirement because the proposed changes will impose no more than minor costs on businesses in the affected industry and the agency was not requested to do so by the joint administrative rules review committee (see RCW 19.85.030(1)).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, Management Analyst, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail Alicia.Curry@Lni.wa.gov.

RCW 34.05.328 applies to the proposed rule pursuant to RCW 34.05.328 (5)(a)(i) as a significant legislative rule of L&I.

September 3, 2013
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 04-12-047, filed 5/28/04, effective 6/30/04)

WAC 296-96-00500 Scope, purpose, and authority. This chapter is authorized by chapter 70.87 RCW covering elevators, lifting devices, moving walks, and other conveyances. The purpose of this chapter is to:

(1) Provide for the safe design, installation, mechanical and electrical operation, maintenance, examinations, safety tests and inspection of conveyances, and the performance of conveyance work((;)).

(2) Ensure that all such operation, design inspection, and conveyance work subject to the provisions of this chapter will be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington.

(3) Establish and ensure compliance with the minimum standards for becoming a licensed elevator contractor and/or licensed elevator mechanic performing work on elevators or other conveyances covered by chapter 70.87 RCW and this chapter.

(4) In any case where the national standards codes adopted by reference in chapter 296-96 WAC conflict with the requirements of national standards adopted, this chapter supersedes.

(5) When no applicable standard exists to address subsections (1), (2), and (3) of this section the department will issue a ruling or interpretation that outlines the intent of this chapter.

AMENDATORY SECTION (Amending WSR 04-12-047, filed 5/28/04, effective 6/30/04)

WAC 296-96-00600 What rules apply to your conveyance? Elevators and other conveyances must comply with the rules adopted by the department that were in effect at the time the conveyance was permitted, regardless of whether the rule(s) has been repealed, unless any new rule specifically states that it applies to all conveyances, regardless of when the conveyance was permitted. Copies of previous rules adopted by the department are available upon request.

Please note, if the conveyance is altered the components associated with the alteration must comply with all of the applicable rules adopted by the department in effect at the time the conveyance ((~~was altered~~)) alteration was permitted. If the department determines that a conveyance was altered without a permit and inspection, the alteration will be required to comply with the applicable rules adopted by the department at the time the noncompliant alteration was identified.

AMENDATORY SECTION (Amending WSR 08-23-085, filed 11/18/08, effective 12/19/08)

WAC 296-96-00650 Which National Elevator Codes and Supplements has the department adopted?

NATIONAL ELEVATOR CODES AND SUPPLEMENTS ADOPTED				
TYPE OF CONVEYANCE	NATIONAL CODE AND SUPPLEMENTS	DATE INSTALLED		COMMENTS
		FROM	TO	
Elevators, Dumbwaiters, Escalators	American Standard Safety Code (ASA) A17.1, 1962	11/1/1963	12/29/1967	Adopted Standard
Moving Walks	American Safety Association A17.1.13, 1962	11/1/1963	12/29/1967	Adopted Standard
Elevators, Dumbwaiters, Escalators, and Moving Walks	U.S.A. Standards (USAS) USAS A17.1, 1965; Supplements A17.1a, 1967; A17.1b, 1968; A17.1c, 1969;	12/30/1967	2/24/1972	Adopted Standard USAS 1965 includes revision and consolidation of A17.1-1, 1960, A17.1a, 1963, and A17.1-13, 1962. Adopted code and supplements, excluding Appendix E and ANSI 17.1d, 1970.
Elevators, Dumbwaiters, Escalators, and Moving Walks	American National Standard Institute ANSI A17.1, 1971	2/25/1972	6/30/1982	Adopted Standard as amended and revised through 1971.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1, 1971; A17.1a, 1972	2/25/1972	6/30/1982	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1, 1981	7/1/1982	1/9/1986	Adopted Standard
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1a, 1982	3/1/1984	1/9/1986	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1b, 1983	12/1/1984	1/9/1986	Adopted Supplement, except portable escalators covered by Part VIII of A17.1b, 1983.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1, 1984	1/10/1986	12/31/1988	Adopted Standard Except Part XIX. After 11/1/1988 Part II, Rule 211.3b was replaced by WAC 296-81-275.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1a, 1985	1/10/1986	12/31/1988	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1b, 1985; A17.1c, 1986; A17.1d, 1986; and A17.1e, 1987	12/6/1987	12/31/1988	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1, 1987	1/1/1989	12/31/1992	Adopted Standard Except Part XIX and Part II, Rule 211.3b. WAC 296-81-275 replaced Part II, Rule 211.3b.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1, 1990	1/1/1993	2/28/1995	Adopted Standard Except Part XIX and Part V, Section 513. Chapter 296-94 WAC replaced Part V, Section 513.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1, 1993	3/1/1995	6/30/1998	Adopted Standard Except Part XIX and Part V, Section 513. Chapter 296-94 WAC replaced Part V, Section 513.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1, 1996	6/30/1998	6/30/2004	Adopted Standard Except Part V, Section 513.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1, 2000; A17.1a, 2002; A17.1b, 2003	7/1/2004	1/1/2008	Adopted Standards and Addenda Except Rules 2.4.12.2, 8.6.5.8 and Sections 5.4, 7.4, 7.5, 7.6, 7.9, 7.10, 8.10.1.1.3 and 8.11.1.1.

NATIONAL ELEVATOR CODES AND SUPPLEMENTS ADOPTED				
TYPE OF CONVEYANCE	NATIONAL CODE AND SUPPLEMENTS	DATE INSTALLED		COMMENTS
		FROM	TO	
Safety Standards for Platform Lifts and Stairway Chairlifts	ASME A18.1, 1999; A18.1a, 2001; A18.1b, 2001	7/1/2004	1/1/2008	Adopted Standards and Addenda.
Safety Code for Elevators, Escalators, Dumbwaiters, Residential Elevators, Special Purpose	ASME A17.1-2004; A17.1a-2005	1/1/2008	((~~Current~~)) 1/1/2014	Adopted Standards and Addenda Except Rules ((~~2.4.12.2~~)) 2.4.7.2, marked car top clearance space, 8.6.5.8, Maintenance of safety bulkhead, 5.4, Private residence incline elevators, 7.4 & 7.5 &7.9 & 7.10 Material lifts, 8.10.1.1.3 and 8.11.1.1, QEI-1 inspector.
Safety Code for Platform Lifts and Stairway Chairlifts	ASME A18.1-2005	1/1/2008	((~~Current~~)) 1/1/2014	
Safety Code for Belt Manlifts	ASME A90.1-2003	1/1/2008	((~~Current~~)) 1/1/2014	
Safety Code for Personnel Hoists, Retroactive	ANSI A10.4-2004	1/1/2008	((~~Current~~)) 1/1/2014	
Safety Code for Elevators, Escalators, Dumbwaiters, Residential Elevators, Special Purpose	ASME A17.1-2010	1/1/2014	Current	
Standard for Elevator Suspension, Compensation, and Governor Systems	ASME A17.6-2010	1/1/2014	Current	
Safety Code for Platform Lifts and Stairway Chairlifts	ASME A18.1-2011	1/1/2014	Current	
Safety Code for Belt Manlifts Safety	ASME A90.1-2009	1/1/2014	Current	
Safety Code for Personnel Hoists	ANSI A10.4-2007	1/1/2014	Current	

Note: Copies of codes and supplements can be obtained from The American Society of Mechanical Engineers, Order Department, 22 Law Drive, Box 2900, Fairfield, New Jersey, 07007-2900 or by visiting www.asme.org.

Comments: National codes adopted by this chapter will be identified with the applicable ASME/ANSI code reference number contained within the rules or as excluded or amended below.

(1) Exclude all references to QEI certification in ASME A17.1 from code adoption.

(2) Exclude all references and sections to Aramid fiber ropes in ASME A17.1 and A17.6 from code adoption.

(3) ASME A17.1, SECTION 1.2 PURPOSE AND EXCEPTIONS amended as follows:

The purpose of this code is to provide for the safety of life and limb, and to promote the public welfare. Compliance with this code shall be achieved by:

(a) Conformance with the requirements in ASME A17.1/CSA B44 and chapter 296-96 WAC. Additions or modifications to ASME A17.1/CSA B44 and/or chapter 296-96 WAC shall require approval from the department; or

(b) Conformance with a combination of the requirements in ASME A17.1/CSA B44, chapter 296-96 WAC, and ASME A17.7/CSA B44.7 with the following ASME A17.7 inclusions:

(i) All system or component certifications performed by an accredited elevator/escalator certification organization (AECO) under ASME A17.7/CSA B44.7, shall be approved by the department before any such system or component is allowed to be permitted or installed in the state of Washington. The applicant must submit all code documentation required by ASME A17.7 Section 2.10 and any other documentation as may be requested.

(ii) Sections of chapter 296-96 WAC that have taken exception to, made additions to, or modifications to ASME A17.1/CSA B44, such exceptions, additions and modifications shall supersede corresponding requirements in ASME A17.7/CSA B44.7.

(iii) The department has the final authority regarding acceptance of any item in ASME A17.7. The department may remove approval if a design has changed or unforeseen or undisclosed information is obtained.

(iv) The department will post the specific ASME A17.7 AECO certificate including exceptions agreed upon. At that time the certificate and exceptions become part of the adopted rule in the state of Washington and not subject to a variance process. The installer shall post the certificate and exceptions including all required information on each conveyance installed utilizing the ASME A17.7 method.

(v) The department may charge an additional fee for each item in review based upon the variance fee table.

(4) MARINE ELEVATOR SECTION 5.8

This chapter only applies to elevators installed on board a marine vessel flying the Washington state flag and under one hundred gross metric tons.

(5) Exclude ASME A17.1-2.4.7.2 reference for clearance reduction.

(6) Exclude ASME A17.1-5.4 private residence incline elevators and ASME A17.1-7.4, 7.5, 7.6, 7.9, and 7.10 material lifts and their corresponding 8.10.1.1.3.

(7) Exclude ASME A17.1-2.14.1.5.2 on elevators in partially enclosed hoistways. A top emergency exit shall be required.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-00700 Chapter definitions. The following definitions apply to this chapter (see RCW 70.87.010 for additional definitions necessary for use with this chapter):

"ANSI" means the American National Standard Institute.

"ASA" means the American Safety Association.

"ASME" means the American Society of Mechanical Engineers.

"Acceptable proof" refers to the documentation that must be provided to the department during the elevator contractor and mechanic license application and renewal process. Acceptable proof may include department-approved forms documenting years of experience, affidavits, letters from previous employers, declarations of experience, education credits, copies of contractor registration information, etc. Additional documentation may be requested by the department to verify the information provided on the application.

"Code" refers to nationally accepted codes (i.e., ASME, ANSI, ASA, and NEC) and the Washington Administrative Code.

"Control room" refers to an enclosed control space outside the hoistway of the elevator or dumbwaiter, intended for full bodily entry that contains the motor and motion controller. The room could also contain electrical and/or mechanical equipment used directly in connection with the elevator or dumbwaiter, but not the electric driving machine.

"Control space" refers to a space outside the hoistway of the elevator, intended to be accessed without full bodily entry, which contains the motor and motion controller. This space could also contain electrical and/or mechanical equipment used directly in connection with the elevator but not the electric driving machine or the hydraulic machine. A control space* is limited to elevators, dumbwaiters, special purpose, and material lifts. The space shall not share any location, area or room which is also accessible to the general public.

***Note:** A control space must be preapproved and is limited on a case-by-case basis and should not be considered a normal installation process.

"((~~Decommissioned~~)) Decommissioning conveyance" means ((~~an installation whose power feed lines have been disconnected and:~~

~~(a) A traction elevator, dumbwaiter, or material lift whose suspension ropes have been removed, whose car and counterweight rests at the bottom of the hoistway, and whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side;~~

~~(b) A hydraulic elevator, dumbwaiter, or material lift whose: Car rests at the bottom of the hoistway, pressure piping has been disassembled and a section removed from the premises, hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side, suspension ropes have been removed and counterweights, if provided, landed at the bottom of the hoistway; or~~

~~(c) An escalator or moving walk whose entrances have been permanently barricaded~~)) a group of tasks that must be accomplished in order to place the conveyance in a long-term out-of-service status.

"Elevator machine room" means an enclosed machinery room outside the hoistway, intended for full bodily entry that contains the electric driving machine or the hydraulic machine and the motor controller. The room could also contain electrical and/or mechanical equipment used directly in connection with the elevator.

"Elevator machinery space" means a space inside or outside the hoistway, intended to be accessed with or without full bodily entry that contains elevator mechanical equipment and could also contain electrical equipment used directly in connection with the elevator. This space could also contain the electric driving machine.

"Examination" means a routine process or procedural task(s) or test(s) that ensure a conveyance and its systems and subsystems remain properly maintained and safe to operate.

"Final judgment" means any money that is owed the department as the result of an individual's or firm's unsuccessful appeal of a civil penalty. Final judgment also includes any penalties assessed against an individual or firm owed the department as a result of an unappealed civil penalty or any outstanding fees due under chapter 70.87 RCW and this chapter.

"General direction - Installation and alteration work" means the necessary education, assistance, and supervision provided by a licensed elevator mechanic (in the appropriate category) who is on the same job site as the helper/apprentice at least seventy-five percent of each working day. The ratio of helper to mechanic shall be one-to-one.

"General direction - Maintenance work" means the necessary education, assistance, and supervision provided by a licensed elevator mechanic (in the appropriate category) to ensure that the maintenance work is performed safely and to code.

"Layout drawings" or **"plans"** or **"shop drawings"** means engineering drawings that show required clearances and dimensions of elevator equipment in relation to building structure and shall include a machine room plan, hoistway plan, hoistway elevation, detail drawings, and general elevator data.

"Lockout" means the placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

"Primary point of contact" is the designated individual employed by a licensed elevator contractor.

"Private residence elevator" (residential elevator) means a power passenger elevator which is limited in size, capacity, rise and speed and is installed in a private residence or multiple dwelling as a means of access to a private residence provided the elevators are so installed that they are not accessible to the general public or to other occupants in the building.

"Red tag" or **"red tag status"** means an elevator or other conveyance that has been removed from service and operation because of noncompliance with chapter 70.87 RCW and this chapter or at the request of the owner.

((~~**"Private residence elevator" (residential elevator)** means a power passenger elevator which is limited in size, capacity, rise and speed and is installed in a private residence or multiple dwelling as a means of access to a private residence provided the elevators are so installed that they are not accessible to the general public or to other occupants in the building.~~))

"RCW" means the Revised Code of Washington.

"Tagout" means the placement of a tagout device on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed by the individual who established the tag or by a person designated by the chief elevator inspector.

"Traction elevator" means an elevator in which the friction between the hoist ropes and the machine sheave is used to move the elevator car.

"USAS" means the U.S.A. Standards.

"WAC" means the Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-00902 Are there exceptions from the elevator mechanic licensing requirements? Yes.

(1) Elevator mechanic licenses issued under chapter 70.87 RCW and this chapter are not required for:

(a) Individuals who install signal systems, fans, electric light fixtures, illuminated thresholds, finished cab flooring materials that are identical to existing materials and feed wires to the terminals on the elevator main line control provided that the individual does not require access to the pit, hoistway, or top of the car for the installation of these items.

(b) An owner or regularly employed employee of the owner performing only maintenance work of conveyances in accordance with RCW 70.87.270.

(2) Elevator mechanic licenses may not be required for certain types of incidental work that is performed on conveyances when the appropriate lockout and tagout procedures have been performed by a licensed elevator mechanic in the appropriate category. The department must be notified in writing and must approve the scope of work prior to it being performed.

(3) An elevator mechanic license in accordance with RCW 70.87.230, is not required when dismantling or removing a conveyance, as long as the building or structure as defined by its foundation outline is totally secure from public and unauthorized access, and:

(a) The entire building is completely demolished down to and including the foundation; or

(b) The entire building is returned to the basic supporting walls, floors, and roof.

Otherwise, the work is to be performed by a licensed elevator mechanic who works for a licensed elevator contractor.

AMENDATORY SECTION (Amending WSR 04-12-047, filed 5/28/04, effective 6/30/04)

WAC 296-96-00903 Are there exceptions from the elevator contractor licensing requirements? Yes. Elevator contractor licenses issued under chapter 70.87 RCW and this chapter are not required for:

(1) An owner or regularly employed employee of the owner performing only maintenance work of conveyances in accordance with RCW 70.87.270.

(2) A public agency that employs licensed elevator mechanics to perform maintenance.

(3) Demolition of a conveyance as outlined in RCW 70.87.230 and WAC 296-96-00902.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-00904 What must you do to become and remain a licensed elevator contractor? (1) Obtain and maintain a valid specialty or general contractor registration under chapter 18.27 RCW to engage in the business of conveyance work.

(2) Complete and submit a department-approved application. As part of the application:

(a) Specify the employee who is the licensed elevator contractor's primary point of contact.

(b) The person representing the company, firm or company who is applying for the elevator contractor's license must:

(i) Provide acceptable proof to the department that shows that the person representing the company, firm, or company has five years of work experience in performing conveyance work as verified by current and previous state of Washington elevator contractor licenses to do business; or

(ii) Pass a written examination administered by the department on chapter 70.87 RCW and this chapter. (In the case of a firm or company, the exam will be administered to the designated primary point of contact.)

(iii) Failure to pass the examination will require the submittal of a new application.

(3) Pay the fees specified in WAC 296-96-00922.

(4) The department may deny application or renewal of a license under this section if the applicant owes outstanding final judgments to the department.

(5) If the primary point of contact identified in subsection (2)(a) of this section separates employment, his/her relationship or designation is terminated, or death of the designated individual occurs, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination and inform the department of the change in writing or the elevator contractor license will be automatically suspended.

(6) ASME A17.1-8.11.1.7 Unique or product-specific procedures or methods. Where unique or product-specific procedures or methods are required to inspect or test equipment, such procedures or methods shall be:

(a) Provided by the manufacturer or installer or their license may be suspended.

(b) Available to owners for their use or used by their qualified service provider.

(c) Accessible on-site to elevator personnel (see also ASME A17.1-8.6.1.2.1(f)).

(7) ASME A17.1-8.6.1.2.1 A written maintenance control program shall be in place to maintain the equipment in compliance with the requirements of ASME A17.1-8.6 and this chapter.

All elevator companies and other approved maintenance providers (see RCW 70.87.270) who continuously demonstrate noncompliance with the maintenance, examination, testing, documentation, and performance of work outlined in ASME A17.1 and this chapter, specifically Part D, Section VI, shall:

(a) Be notified in writing by the department outlining the reason or reasons for noncompliance;

(b) Respond to the department inquiry within fifteen days;

(c) Outline a solution(s) agreeable to the department within thirty days;

(i) Otherwise the elevator company's license may be suspended until such a time as they can demonstrate compliance; and

(ii) Other approved maintenance providers shall cease maintenance, examination, and testing until such a time as they can demonstrate compliance. Continuous demonstrations of maintenance, examination, and testing noncompliance shall result in approval being revoked.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-00906 What must you do to become a licensed elevator mechanic? (1) Qualify for licensing:

(a) For conveyance work covered by all categories identified in WAC 296-96-00910 except material lifts (05), residential conveyances (06), residential inclined elevators (07) and temporary licenses (09), the applicant must comply with the applicable mechanic licensing requirements as follows:

(i) Test.

(A) The applicant must provide acceptable proof to the department that shows the necessary combination of documented experience and education credits in the applicable license category (see WAC 296-96-00910) of not less than three years' work experience in the elevator industry performing conveyance work as verified by current and previous employers licensed to do business in this state or as an employee of a public agency; and

(B) Pass an examination administered by the department on chapter 70.87 RCW and this chapter((-)); or

(ii) National exam/education.

(A) Have obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the National Elevator Industry Educational Program or its equivalent; or

(B) Have obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of chapter 70.87 RCW and this chapter, and registered with the Washington state apprenticeship and training council under chapter 49.04 RCW((-)); or

(iii) Reciprocity. The applicant must provide acceptable proof to the department that shows that the applicant is holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of chapter 70.87 RCW and this chapter.

(b) For conveyance work performed on material lifts as identified in WAC 296-96-00910(5):

Test.

(i) The applicant and the licensed elevator contractor/employer must comply with the provisions of RCW 70.87.245; and

(ii) The applicant must pass an examination administered by the department on chapter 70.87 RCW and this chapter;

(c) For residential conveyance work covered by category (06) as identified in WAC 296-96-00910:

Test.

(i) The applicant must provide acceptable proof to the department that shows the necessary combination of documented experience and education credits in the applicable license category (see WAC 296-96-00910) of not less than two years' work experience in the elevator industry performing conveyance work as verified by current and previous employers licensed to do business in this state; and

(ii) Pass an examination administered by the department on chapter 70.87 RCW and this chapter.

(d) For residential inclined conveyance work covered by category (07) as identified in WAC 296-96-00910;

Test.

(i) The applicant must provide acceptable proof to the department that shows the necessary combination of documented experience and education credits in the applicable license category (see WAC 296-96-00910) of not less than one year's work experience in the elevator industry or not less than three years' documented experience and education credits in conveyance work as described in category (01) performing conveyance work as verified by current and previous employers licensed to do business in this state; and

(ii) Pass an examination administered by the department on chapter 70.87 RCW and this chapter.

(e) For temporary mechanic licenses as identified in WAC 296-96-00910 category (09) the applicant must provide acceptable proof from a licensed elevator contractor that attests that the temporary mechanic is certified as qualified and competent to perform work under chapter 70.87 RCW and this chapter.

(2) Complete and submit a department-approved application.

An applicant who is required to take an examination under the provisions of this section may not perform the duties of a licensed elevator mechanic until the applicant has been notified by the department that he/she has passed the examination.

(3) Pay the fees specified in WAC 296-96-00922.

(4) The department may deny application of a license under this section if the applicant owes outstanding final judgments to the department or does not meet the minimum criteria established in the elevator laws and rules.

NEW SECTION

WAC 296-96-00907 ASME A17.1-8.11.1.5 Making safety devices ineffective. No person shall at any time make any required safety device or electrical protective device ineffective, except where necessary during tests and inspections. Such devices must be restored to their normal operating condition in conformity with the applicable requirements prior to returning the equipment to service (see ASME A17.1-2.26.7). If a required safety device or electrical protective device is found ineffective during the course of normal operation the conveyance must be immediately taken out of service. If the authorized mechanic or elevator company is found responsible for disabling the device(s) and placing the conveyance back into service they may have their license suspended until they can demonstrate conformity to the chapter (examples include, but are not limited to: Safety circuit, door and gate, terminal slowdowns, door reopening devices, anti-egress devices, or over current protection devices).

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-00910 What are the elevator mechanic license categories? The following are the licensing categories for qualified elevator mechanics or temporary elevator mechanics:

(1) **Category (01):** A general elevator mechanic license encompasses mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of all types of elevators and other conveyances in any location covered under chapter 70.87 RCW and this chapter.

(2) **Category (02):** This license is limited to the mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of the following commercial and residential conveyances:

(a) Residential conveyances:

(i) Wheelchair lifts;

(ii) Dumbwaiters;

(iii) Incline chairlifts; and

(iv) Residential elevators;

(b) Commercial conveyances:

(i) Wheelchair lifts;

(ii) Dumbwaiters; and

(iii) Incline chairlifts.

(3) **Category (03):** This license is limited to the mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of the following conveyances in industrial sites and grain terminals:

(a) Electric and hand powered manlifts;

(b) Special purpose elevators; and

(c) Belt manlifts.

(4) **Category (04):** This license is limited to the mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of the following conveyances:

(a) Temporary personnel hoists;

(b) Temporary material hoists; and

(c) Special purpose elevators.

(5) **Category (05):** This license is limited to the mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of material lifts.

(6) **Category (06):**

(a) This license is limited to the mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of the following conveyances:

(i) Residential wheelchair lifts;

(ii) Residential dumbwaiters; and

(iii) Residential incline chairlifts.

(b) Work experience on conveyances in (a)(i), (ii), and (iii) of this subsection may not be all inclusively applied toward the category (02) license requirements.

Note: Maintenance work performed by the owner or at the direction of the owner is exempted from licensing requirements provided that the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public. Such exempt work does not count toward work experience for licensure.

(7) **Category (07):** This license is limited to the mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of residential inclined elevators.

Note: Maintenance work performed by the owner or at the direction of the owner is exempted from licensing requirements provided that the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public. Such exempt work does not count toward work experience for licensure.

(8) **Category (08):** This license is limited to maintenance and nonalteration repair and replacement of all conveyances and is further limited to employees of public agencies to obtain and maintain the license. This work should not count towards other licenses.

(9) **Category (09):** This temporary license is limited to the mechanical and electrical operation, construction, installation, alteration, maintenance, inspection, relocation, decommission, and repair of conveyances. This license is limited to individuals that are certified as qualified and competent by licensed elevator contractors and have met the education and training requirements in the category of license for the work performed. See policy number 07-16-104. The individual must be an employee of the licensed elevator contractor. The contractor shall furnish acceptable proof of competency as the department may require. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular elevators or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued under chapter 70.87 RCW and this chapter.

Note: See policy number ((~~07-01~~)) 07-16-104.

AMENDATORY SECTION (Amending WSR 04-12-047, filed 5/28/04, effective 6/30/04)

WAC 296-96-00912 How long is the elevator contractor, elevator mechanic, and temporary mechanics licensing period and what is required for renewal? (1) Elevator contractors.

(a) The renewal period is two years from the date of issuance.

(b) As part of the renewal process the elevator contractor must:

(i) Complete and submit a department-approved application.

(ii) Designate an employee as a primary point of contact.

(iii) Pay the fees specified in WAC 296-96-00922.

(2) Elevator mechanics (category 01-08).

(a) The renewal period is two years from the date of your birthday. The initial license may be for a shorter period as follows. If your birth year is:

(i) In an even-numbered year, your certificate will expire on your birth date in the next even-numbered year.

(ii) In an odd-numbered year, your certificate will expire on your birth date in the next odd-numbered year.

(b) As part of the renewal process you must:

(i) Complete and submit a department-approved application.

(ii) Have attended an approved continuing education course and submitted a certificate of completion for the course. The course must consist of not less than eight hours of instruction that must have been attended and completed within one year immediately preceding any license renewal.

(iii) Pay the fees specified in WAC 296-96-00922.

(3) Temporary elevator mechanics (category 9). The renewal is limited to two consecutive months and further limited by no greater than six permits issued in a twelve-month period. The limitation may be extended at the discretion of the department. Examples include, but are not limited to, abnormally high rate of construction, natural disaster or work stoppage.

(a) The renewal period is thirty days from the date of issuance.

(b) As part of the renewal process you must:

(i) Complete and submit a department-approved application.

(ii) Pay the fees specified in WAC 296-96-00922.

(iii) Have seventy-five percent of both education and training hours to obtain a license (see education policy).

(4) The department may deny renewals of licenses under this section if the applicant owes outstanding final judgments to the department.

(5) Renewals will be considered timely when the renewal application is received on or prior to the expiration date of the license.

(6) Late renewal is for renewal applications received after the expiration date of the license but no later than ninety days after the expiration of the licenses. If the application is not received within ninety days from license expiration, the licensee must reapply and pass the competency examination.

(7) A mechanic licensed in the state of Washington may take a withdrawal if they are no longer working for a company licensed in the state or no longer performing work that requires a license. A mechanic holding a valid license that wishes to withdraw their license must submit their request, in writing, to the department of labor and industries elevator section prior to the license expiration date. To cancel a withdrawal request and be reinstated, the mechanic must submit their request in writing, reapply, complete the current continuing education, and pay the renewal licensing fee.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-01000 What is the permit process for conveyances? (1) Prior to construction, alteration, or relocation of any conveyance, the licensed elevator contractor shall:

(a) Submit an installation application to the department. See WAC 296-96-01010 through 296-96-01025.

(b) ((~~Plans must be submitted~~)) Submit plans to ((~~and approved by~~)) the department for approval. See WAC 296-96-01030.

EXCEPTION: Most alterations will not require plans.

(c) Post an approved installation or alteration permit ((~~from~~)) issued by the department on the job site.

(i) The annual operating certificate is considered suspended once alteration work begins.

(ii) The certificate shall not be reinstated until the alteration work is approved by an inspector employed by the department.

(d) Obtain and pass an inspection prior to placing the conveyance in service. See WAC 296-96-01035.

(e) Abstain from working without a permit or releasing the conveyance for use without the department's written permission. Failure to comply is a violation of this chapter and may result in civil penalties (WAC 296-96-01070 (1)(a)).

(2) The owner must obtain and renew an annual operating certificate for each conveyance that they own, except for residential conveyances. See WAC 296-96-01065.

(3) After initial purchase and inspection, private residence conveyance(s) do not require an annual operating certificate. However, annual inspections may be conducted upon request. See WAC 296-96-01045 for the permit process.

NEW SECTION

WAC 296-96-01008 Decommissioning a conveyance. A licensed elevator mechanic working for a licensed elevator company must decommission the conveyance. If the elevator is the only one in the building and the owner/agent wants the conveyance decommissioned the owner/agent must obtain a letter of approval from the local building official.

Note: Decommissioning is not dismantling or removing the conveyance.

(1) A conveyance is considered to be in decommissioned status when:

(a) The power feed lines from the disconnect switch to the controller have been removed; and

(b) The traction elevator, dumbwaiter, or material lift suspension ropes have been removed, and if applicable, the counterweight rests at the bottom of the hoistway. The hoist-

way doors, except for the bottom landing, have been permanently barricaded or sealed in the closed position on the hoistway side; and

(c) A hydraulic elevator, dumbwaiter, or material lift car rests at the bottom of the hoistway; pressure piping has been disassembled and a section removed from the premises; hoistway doors except for the bottom landing have been permanently barricaded or sealed in the closed position on the hoistway side; suspension ropes have been removed and counterweights, if provided, landed at the bottom of the hoistway; and

(d) The escalator or moving walk entrances have been permanently barricaded.

(2) After decommissioning work is complete:

(a) The elevator mechanic must contact the department to schedule an inspection;

(b) The department will perform an inspection and send the results and applicable fee to the conveyance owner;

(c) Upon inspection and approval by the department, annual inspections will no longer be required, until such time that the conveyance is returned to service.

(3) If returning the conveyance to service and prior to operating the conveyance, an acceptance inspection and temporary operating permit must be obtained. The conveyance acceptance inspection shall be performed to the code in effect from the date of its original installation or alteration.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01070 What are the civil (monetary) penalties for violating the conveyance permit and operation requirements of chapter 70.87 RCW and this chapter? (1) Any licensee, installer, owner or operator of a conveyance who violates a provision of chapter 70.87 RCW or this chapter shall be subject to the following civil penalties:

(a)	Operation of a conveyance without a permit or written approval from the department:	
	First violation	$171.20
	Second violation	$342.60
	Each additional violation . . .	$500.00
(b)	Installation of a conveyance without a permit:	
	First violation	$171.20
	Second violation	$342.60
	Each additional violation . . .	$500.00
(c)	Relocation of a conveyance without a permit:	
	First violation	$171.20
	Second violation	$342.60
	Each additional violation . . .	$500.00
(d)	Alteration of a conveyance without a permit:	
	First violation	$171.20
	Second violation	$342.60
	Each additional violation . . .	$500.00
(e)	(i) Operation of a conveyance for which the department has issued a red tag or has revoked or suspended an operating permit or operation of a decommissioned elevator	$500.00
	(ii) Removal of a red tag from a conveyance	$500.00
(f)	Failure to comply with a correction notice:	
	After 90 days	$114.10
	After 180 days	$285.40
	After 270 days	$457.00
	After 360 days	$500.00
	Each 30 days after 360 days .	$500.00
	Note: Penalties are cumulative	
(g)	Failure to submit official written notification that all corrections have been completed:	
	After 90 days	$114.10
	After 180 days	$285.40
	After 270 days	$457.00
	After 360 days	$500.00
	Each 30 days after 360 days .	$500.00
	Note: Penalties are cumulative	
(h)	Failure to notify the department of each accident to a person requiring the services of a physician or resulting in a disability exceeding one day may result in a $500.00 penalty per day. The conveyance must be removed from service until the department authorizes the operation of the conveyance. This may require an inspection and the applicable fees will be applied. Failure to remove the conveyance from service may result in an additional $500.00 penalty per day.	$500.00 Plus WAC 296-96-01057
(i)	Falsifying official written documentation submitted to the department. Each day is a separate violation.	$500.00

(2) A violation as described in subsection (1)(a), (b), (c), and (d) of this section will be a "second" or "additional" violation only if it occurs within one year of the first violation.

(3) The department must serve notice by certified mail to an installer, licensee, owner, or operator for a violation of chapter 70.87 RCW, or this chapter.

PART C - REGULATIONS FOR NEW AND ALTERED ELEVATORS AND LIFTING DEVICES

NOTE: The following rules set the minimum standard for all new installations and, where applicable, alterations.

NOTE: Part C is not intended to replace the current adopted standards outlined in WAC 296-96-00650. In conflicts between Part C and the adopted standards, Part C ((~~will~~)) shall take precedent.

NEW SECTION

WAC 296-96-02401 ASME A17.1-8.7.1 Alteration general requirements. Alterations or replacement of new equipment to existing hoistway, machine room and machine space must follow the current rules for new elevators as related to location of equipment, motor controllers, motion controllers, drives, transformers, and other equipment as amended by this chapter.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02405 What is the inspection and approval process for alterations? The following process must be followed when performing alterations:

(1) Obtain an alteration permit from the department prior to performing the alteration. The permit application must include detailed information on the scope of the alteration.

(2) Take the conveyance out-of-service and perform the alteration.

(3)(((~~(a)~~))) If the conveyance requires an inspection prior to being returned to service (as identified on the alteration permit), you must contact the department to ((~~perform~~)) schedule an inspection at least seven days in advance and:

(((~~(i)~~))) (a) A licensed mechanic must be present and if the conveyance passes the inspection, the conveyance may be placed back into service.

(((~~(ii)~~))) (b) If the conveyance fails the inspection, the conveyance must remain out-of-service until the corrections are made, reinspection scheduled and approved by the department.

(((~~(b)~~))) (4) If the conveyance is not required to be inspected prior to being returned to service, you must contact the department immediately to ((~~perform~~)) schedule an inspection within seven days and obtain written permission prior to returning the conveyance to service. A licensed mechanic must be present during the scheduled inspection and:

(((~~(i)~~))) (a) If the conveyance passes the inspection, the conveyance may remain in service.

(((~~(ii)~~))) (b) If the conveyance fails the inspection, the conveyance will be placed out-of-service until the corrections are made, reinspection scheduled and approved by the department.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02410 Are there additional work requirements when performing an alteration? For certain types of alterations additional work may be required as part of the alteration and prior to approval of the conveyance. These alterations include, but are not limited to:

(1) Replacements of controllers will require the following:

(a) Firefighter service requirements must be ((~~met~~)) in accordance with the most recent code adopted by the department and include ASME A17.1-8.7.2.27.4 (a)(4)(a) when travel is five feet or more above or below the designated landing.

(b) Seismic requirements (((~~"~~))) for derailment and/or seismic switch as required(((~~"~~))) must be met in accordance with the most recent code adopted by the department. In addition, the ((~~car~~)) conveyance must operate according to ASME A17.1 seismic requirements.

(c) Lighting in the machine room and pit must comply with the most recent code adopted by the department.

(d) Electrical outlets in the machine room and pit must be of the ground fault interrupter type.

(2) Replacement of controllers and a car operating panel and/or hall fixtures:

(a) The requirements of subsection (1) of this section must be met.

(b) All panels and fixtures must meet the applicable (e.g., height, sound, Braille, etc.) requirements in accordance with this chapter.

(3) Replacement of door operators and/or door equipment: Any changes to these items require the installation of door restrictors.

(4) Hydraulic piping: Replacement or relocation of hydraulic piping including a control valve will require the installation of a rupture (overspeed) valve. Gaskets and seals are excluded from this requirement.

Note: The department may grant exceptions to the requirements identified in this section.

NEW SECTION

WAC 296-96-02411 ASME A17.1-8.7.2.13 Door reopening devices. Where a reopening device for power-operated car doors or gates is altered, replaced or added, it is considered an alteration and the following requirements shall apply:

(1) Requirement 2.13.4;

(2) Requirement 2.13.5; and

(3) When firefighters' emergency operation is provided, door reopening devices and door closing on Phase I and Phase II shall comply with the requirements applicable at the time of installation of the firefighters' emergency operation.

NEW SECTION

WAC 296-96-02421 Layout drawings. Two sets of legible layout/plans must be submitted to the department, in addition to the layout criteria in ASME, include the following:

(1) A machine room plan identifying room dimensions, location of drive machine and motor controller, mainline disconnect, outlet, light switch, and door swing;

(2) A hoistway plan identifying hoistway and conveyance equipment dimensions and clearances, foot print of cab showing doors and inside cab dimensions, and location and dimensions of hoistway and cab door or gates;

(3) A hoistway elevation section identifying elevation of the hoistway and conveyance equipment dimensions and clearances, location of rail brackets, pit ladder, pit light, light switch, pit stop switch, top of car clearances, and on MRLs the height to the equipment from the horizontal plane of the top of the car with the car positioned at the top landing; and

(4) Detail drawings identifying specific details of conveyance components: Rail bracket fastening, sill support and fastening, machine beams, entrance installation assembly, loads and reactions, and additional seismic requirements (when required by building code).

General conveyance data includes:

(a) Conveyance type (model) and capacity;

(b) Location number (within building);

(c) Up/down full load speed;

(d) Car enclosure (construction material);

(e) Door type and manufacturer (single speed, two-speed, center opening, RH/LH opening);

(f) Platform thickness;

(g) Finish floor (tile, carpet);

(h) Power unit/drive motor (manufacturer and HP);

(i) Power requirements;

(j) Equipment heat generation (BTU) (Items (k)-(o) are applicable to hydraulic);

(k) Jack model;

(l) Plunger O.D. (if telescoping O.D. of each section);

(m) Plunger wall thickness;

(n) Cylinder O.D.;

(o) Cylinder wall thickness (items (p)-(u) are applicable to roped-hydraulic and electric);

(p) Size and number of hoist ropes;

(q) Roping type (1:1, 2:1, underslung);

(r) Governor location;

(s) Governor rope size and number;

(t) Safety manufacture and type;

(u) Emergency brake manufacture and type;

(v) Care buffer type and stroke;

(w) CWT buffer type, impact, and stroke; and

(x) Top/bottom runby.

NEW SECTION

WAC 296-96-02451 When a control space is used in lieu of a machine room.

Note: For elevators, a control space may be approved on a limited case-by-case basis and should not be considered a normal installation process.

(1) The control space cannot be located where the entrance to the space is accessible to the public.

(2) The space must be designed to prevent full bodily entry with the door closed.

(3) The control space shall not open into:

(a) Hazardous locations;

(b) The outside environment when exposed on any side, top or bottom; and

(c) A space that is not environmentally controlled to maintain the elevator within the manufacturer's recommended temperature and humidity levels.

(4) Barricaded control space must be free of areas containing piping conveying liquid, vapor, or gas.

(5) If metal access doors are used, proper electrical clearances must be provided per the National Electrical Code.

(6) The space must have full environmental control as required by a machine room.

(7) Barricades must be:

(a) Minimum depth equal to forty-eight inches from the controller cabinet door to barricade;

(b) Minimum width equal to thirty-two inches and shall be the full width of the access opening;

(c) Minimum height equal to six feet;

(d) Minimum material equal to nonconductive rating;

(e) Permanently affixed to the inside door or jamb as to not be removed from the space;

(f) Constructed to withstand a force of two hundred fifty pounds of pressure applied in any direction without deflecting more than one-half inch (may require a floor mount when attached only to the door to meet deflection requirements);

(g) Provided with signage, "if you leave this area, you must replace guards and close doors." The minimum height of lettering shall be one inch.

(8) The control space shall be fire rated equivalent to the International Building Code, chapter 30.

NEW SECTION

WAC 296-96-02452 Machines, beams and hitch supports must meet the following requirements. When the machine space is provided inside the hoistway:

(1) The machine and overhead sheaves cannot be located more than six feet six inches from the horizontal plane of the cartop.

(2) The cartop inspection shall not operate past the normal terminal stopping device.

Note: Where access is greater than six feet six inches (see WAC 296-96-23115).

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02455 What is the minimum working space required in machine rooms/control rooms? (1) In machine rooms with equipment requiring maintenance and inspection, an eighteen-inch working space must be established.

(2) There must be a minimum of eighteen inches working space (other than the required controller panel clearances) on one of the four sides of the hydraulic tank.

(3) The requirements in subsections (1) and (2) of this section do not supersede NFPA 70.

(4) The side with the hydraulic outlet pipe is not considered usable working space.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02460 What are the requirements for electrical main line disconnects? (1) The main line discon-

nect switch(es) or circuit breaker must be located per NEC 620.51(c) and:

(a) Inside the machine room door on the lock jamb side of the machine room door ((~~and~~));

(b) Not more than twenty-four inches from the jamb to the operating handle; and ((~~it must~~))

(c) Be at a height ((~~of~~)) not less than thirty-six inches and not more than sixty-six inches above the finish floor as measured centerline to the disconnect handle.

(2) For multicar machine rooms the switches shall be grouped together as close as possible to that location.

(3) For machine rooms with double swing doors, the doors must swing out and the switch(es) must be on the wall adjacent to the hinge side of the active door panel.

(4) The switch(es) must be designed so that they may be locked out and tagged in the open position.

EXCEPTION: Special purpose and residential inclined elevators are exempt from this section.

NEW SECTION

WAC 296-96-02466 ASME A17.1-8.9 Code data plate location and material. (1) An individual data plate shall be provided and maintained for each unit (see 1.1.1). The data plate shall indicate:

(a) Code to be used for inspections and tests (see 8.10.1.2);

(b) Code and edition in effect at the time of installation; and

(c) Code in effect at the time of any alteration and indicate the applicable requirements of 8.7, including reference number.

(2) The data plate shall be of such material and construction that the letters and figures stamped, etched or cast to the face shall remain permanently and readily legible. The height of the letters and figures shall be not less than 3.2 millimeters (0.125 inches).

(3) All data plates shall be provided with either of the additional requirements listed in 8.9.3 (a) or (b).

NEW SECTION

WAC 296-96-02471 ASME A17.1-2.27.8 FEO-K1 Fire service keys. The key switches required by ASME A17.1-2.27.2 through 2.27.5 for all new and altered elevators in a building shall be operable by the FEO-K1 key. The keys shall be Group 3 Security (see ASME A17.1-8.1). A separate key shall be provided for each switch. This key shall be of a tubular, 7 pin, style 137 construction and shall have a bitting code of 6143521 starting at the tab sequences clockwise as viewed from the barrel end of the key. The key shall be coded "FEO-K1." The possession of the "FEO-K1" key shall be limited to elevator personnel, emergency personnel, elevator equipment manufacturers, and authorized personnel during checking of firefighters emergency operation.

Note: (ASME A17.1-2.27.8) Local fire or building authorities may specify the requirements for a uniform keyed lock box and its location to contain the necessary keys. Where required, a lock box, including its lock and other components, shall conform to the requirements of UL 1037 (see Part 9). These keys shall be kept on the premises in a location readily accessible to firefighters and emergency personnel, but not where they are available to the public.

NEW SECTION

WAC 296-96-02481 Sprinklers and shunt trip within in the city limits of Seattle. Within the city limits of Seattle application of water will be manually controlled and elevator shut down will be installed per the current code adopted by the city of Seattle elevator section.

NEW SECTION

WAC 296-96-02486 ASME A17.1-5.7.10.5 Special purpose elevator car doors or gates. Interlocks or a combination consisting of mechanical locks and electric contacts must be provided for all elevators having car doors. An electrical/mechanical interlock must be provided on car gates on elevators in unenclosed hoistways unless a safe means of self-evacuation is provided. Such means must be approved by the department.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02505 What is the minimum acceptable initial transfer time for an elevator door? The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

T = ((~~D(1.5 ft/s)~~)) D/1.5 ft or T = D/(455 mm) = 5 seconds minimum, where T equals the total time in seconds and D equals the distance (in feet or millimeters) from the point in the lobby or corridor 60 inches (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door.

EXCEPTION: For car with in car lanterns, T shall be permitted to begin when the signal is visible from the point sixty inches directly in front of the furthest hall call button and the audible signal is sounded.

Elevator doors shall remain fully open in response to a car call for three seconds minimum.

EXCEPTION: Special purpose and residential elevators are exempt.

EXCEPTION: Limited use/limited application (LULA), special purpose, and residential elevators are exempt from this section.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02525 What is required for installation and operation of emergency communication systems? Every elevator must contain an emergency two-way commu-

nication system. The installation and operation of this emergency communication system must comply with the ASME A17.1 code in effect when the department issued the elevator's installation permit. In addition to the appropriate ASME A17.1 code, the following requirements apply:

(1) The communication device located in the elevator car must comply with the following:

(a) The maximum height of any operable part of the communication system is forty-eight inches above the floor.

(b) Raised symbols and letters must identify the communication system. These symbols and letters must be located adjacent to the communication device. The characters used must be:

(i) At least 5/8 inches but no more than two inches high;

(ii) Raised 1/32 inch;

(iii) Upper case;

(iv) Sans serif or simple serif type; and

(v) Accompanied by Grade 2 Braille.

(c) If the system is located in a closed compartment, opening the door to the compartment must:

(i) Require the use of only one hand without tight grasping, pinching, or twisting of the wrist; and

(ii) Require a maximum force of five pounds.

(d) The emergency communication system must not be based solely upon voice communication since voice-only systems are inaccessible to people with speech or hearing impairments. An indicator light must be visible when the telephone is activated. This nonverbal means must enable the message recipient to determine the elevator's location address and, when more than one elevator is installed, the elevator's number.

(e) The emergency communication system must use a line that is capable of communicating with and signaling to a person or service that can respond appropriately to the emergency at all times.

(2) A communication device (intercom), if required by ASME A17.1, must be installed in the lobby adjacent to the Phase I key switch. This device must be a two-way communication device used to communicate with individuals in the elevator.

(a) The height of any communication device(s) located in the lobby must be located between forty-eight and sixty inches above the floor.

(b) Additional communication device(s) may also be located in other parts of the building in addition to the one located in the lobby.

(c) ASME A17.1-2.27.1.1.6(a) The two way voice communication (intercom) within the building is not required to meet the telephone operability verification requirements if the connections are hardwired.

EXCEPTION: Elevators that have less than sixty feet of travel do not require an intercom.

(3) Subsections (1) and (2) of this section do not apply to special purpose elevators. However, residential and special purpose elevators must have a means of communication located inside the elevator cab. This communication device must be permanently installed and available at all times. Cell phones and radios do not meet this requirement.

EXCEPTION: Residential inclined elevators are exempt from this section.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02530 What requirements apply to the size and location of car handrails? A handrail must provide coverage lengthwise at least ninety percent from wall to wall.

(1) A handrail must be installed on all car walls not used for normal exits. The handrails must be:

(a) Attached to the wall at a height of between thirty-two and thirty-five inches from the floor((-)) to the top of the handrail;

(b) Attached to the wall with a 1-1/2 inch space between the wall and the rail;

(c) Constructed with the hand grip portion not less than 1-1/4 inches but not more than two inches wide;

(d) Constructed with a cross-section shape that is substantially oval or round;

(e) Constructed with smooth surfaces and no sharp corners. Approaching handrail ends on a blank wall in the interior corners of a car do not have to return to the wall. However, if the handrail is located on the closing door wall of a single-slide or two-speed entrance elevator and it projects an abrupt end towards people entering the car, the handrail end must return to the wall.

(2) Residential elevators must have at least one handrail. The handrail must be installed on a car wall not used for normal exits.

EXCEPTION: Special purpose elevators are exempt from this section.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02550 ASME A17.1-3.18.3.8.3 and ASME A17.1-8.7.3.23.1—What are the requirements for underground hydraulic elevator pipes, fittings, and cylinders? All newly installed underground pressure cylinders and pipes containing hydraulic elevator fluids shall be encased in an outer plastic containment.

(1) The plastic casing shall be constructed of polyethylene or polyvinyl chloride (PVC). The plastic pipe wall thickness must not be less than 0.125 inches (3.175 mm). The casing shall be capped at the bottom and all joints must be solvent or heat welded.

(((~~(2)~~))) (a) The casing shall be sealed and dry around hydraulic pipe and cylinder to contain any leakage into the ground and to prevent electrolysis to the hydraulic pipe and the cylinder. Dry sand may be used to stabilize the hydraulic cylinder.

(((~~(3)~~))) (b) A one-half inch pipe nipple with a one-way check valve shall be located between the casing and cylinder for monitoring purposes.

(((~~(4)~~))) (c) Alternate methods must receive approval from the department prior to installation.

(((~~(5)~~))) (d) This rule shall apply to all conveyances with installation permits issued by the department on or after 01/01/1993.

(2) ASME A17.1-3.18.2.2 Plunger design. Plungers shall be made of steel and shall be designed and constructed in compliance with the applicable formula in ASME A17.1-8.2.8.1 for calculation of elastic stability, bending, and external pressure. Plungers subject to internal pressure shall also be designed and constructed in accordance with cylinder design formula in ASME A17.1-8.2.8.2.

NEW SECTION

WAC 296-96-02551 ASME A17.1-2.6 and ASME A17.1-8.7.2.6 Protection of spaces below hoistways. Shall meet the requirements in WAC 296-96-23140.

NEW SECTION

WAC 296-96-02552 Location of equipment in hoistway. (1) Motor controllers, motion controller, drive, hydraulic control valves, hydraulic reservoir (tank), and hydraulic pump motor shall not be located in the hoistway or pit.

(2) Elevator controls and machinery other than driving machines, hydraulic cylinder, piston, governor, and their components shall be located in a room dedicated exclusively to elevator equipment.

(3) Drive sheaves, deflector sheaves, machine parts and supports are permitted to project into the hoistway.

(4) Driving machines shall not be located in the pit.

NEW SECTION

WAC 296-96-02556 Minimum width, clearances, and access of pit ladders. (1) ASME A17.1-2.2.4.2.2 The ladder rungs, cleats, or steps shall be a minimum of four hundred millimeters (sixteen inches) wide. When obstructions are encountered, the width may be permitted to be decreased to less than four hundred millimeters (sixteen inches). The reduced width shall be as wide as the available space permits, but not less than two hundred twenty-five millimeters (twelve inches).

(2) ASME A17.1-2.2.4.2.4 A clear distance of not less than one hundred fifteen millimeters (four and one-half inches) from the centerline of the rungs, cleats, or steps to the nearest permanent object in back of the ladder shall be provided. A permanent object is to include pipes, wiring, duct, switches, etc., protruding from the pit wall or structure.

(3) All pits shall comply with ASME A17.1-2.2.4.5 and shall include:

ASME A17.1-2.2.4.5(f) Separate pit access doors shall not be located where a person, upon entering the pit, can be struck by any part of the car or counterweight when either is on its fully compressed buffer.

(4) ASME A17.1-2.2.4.4 Pits shall be accessible only to elevator personnel. The owner or other authorized people may access the pit for retrieval, sump pump, drain, and 110VAC lighting service, only if they have been properly trained for pit access entry and a record of the training is kept on-site.

NEW SECTION

WAC 296-96-02557 Pit lighting and stop switch. (1) ASME A17.1-2.2.5.3 The light switch shall be so located as to be accessible from the pit access door on the ladder side and adjacent to the pit stop switch.

(2) ASME A17.1-2.2.6.2 In elevators where access to the pit is through the lowest landing hoistway door, a stop switch shall be located between thirty-six inches and forty-eight inches above the floor level of the landing, within reach from the access floor and adjacent to the pit ladder, if provided. When the pit exceeds one thousand seven hundred millimeters (sixty-seven inches) in depth, an additional stop switch is required adjacent to the pit ladder and approximately one thousand two hundred millimeters (forty-seven inches) above the pit floor.

NEW SECTION

WAC 296-96-02558 Pit equipment. (1) ASME A17.1-2.4.2 When oil buffers are used, the bottom runby shall be not less than one hundred fifty millimeters (six inches). Sections (a) and (b) from the ASME A17.1-2.4.2.1 code are not adopted.

(2) ASME A17.1-2.2.8 When working platform inspection operation is provided, according to ASME A17.1-2.7.5.3.6 in hoistways containing a single elevator:

(a) A pit access door is required; or

(b) Additional elevator personnel shall be present outside the hoistway when the pit inspection operation is in effect.

AMENDATORY SECTION (Amending WSR 08-23-085, filed 11/18/08, effective 12/19/08)

WAC 296-96-02560 What are the requirements for submersible pumps or sumps? (1) Sump pumps and drains are not required in most elevator pits. Sump holes must be installed and measure a minimum of eighteen inches by eighteen inches by eighteen inches. If drains or sump pumps are installed, they must not be directly connected to sewers and/or storm drains. P-traps and check valves are not allowed. All installations must meet the NEC and all plumbing codes. Drains meeting the above requirements may be installed in lieu of sump holes.

Sump hole covers must be designed to withstand a load of three hundred pounds per square foot.

(2) ASME A17.1-2.2.2.5 Elevators that are provided as fire service access elevators (one hundred twenty feet) or occupant evacuation elevators (four hundred feet) a drain or sump pump shall be provided. The sump pump or drain shall have the capacity to remove a minimum of three thousand gallons/hour per elevator and meet all requirements in ASME A17.1, ICC and this chapter.

EXEMPTION: Residential elevators, vertical platform lifts, and special purpose lifts are exempt from this section.

NEW SECTION

WAC 296-96-02564 ASME A17.1-2.4.12.1-2005 Distance required for car top refuge space. An unobstructed

horizontal area of not less than half meters^2 (5.4 feet^2) shall be provided on top of the car enclosure for refuge space. It shall measure not less than six hundred millimeters (twenty-four inches) on any side. This area shall be permitted to include the space utilized for the top emergency exit (see ASME A17.1-2.14.1.5.1(f)). The minimum vertical distance in the refuge area between the top of the car enclosure and the overhead structure or other obstruction shall be not less than one thousand one hundred millimeters (forty-three inches) when the car has reached its maximum upward movement.

NEW SECTION

WAC 296-96-02566 ASME A17.1-2.14.7.1.4 Requirements for top of car lighting and receptacle for elevators. Each elevator shall be provided with lighting and a duplex receptacle fixture on the car top.

(1) The lighting shall be permanently connected and fixed to provide an illumination level of not less than one hundred lux (ten foot candle) measured:

(a) At the point of any elevator part or equipment, where maintenance or inspection is to be performed from the car top; and

(b) Across the entire horizontal plane of the top of the car up to a minimum height of six feet.

(2) All lighting fixture(s) shall be equipped with guards and protected from accidental breakage.

(3) The light switch shall be accessible from the landing when accessing the car top.

(4) Where the access to machinery space is from the top of the car the cartop receptacle may be used.

EXCEPTION: Residential elevator, special purpose installed without lighting.

NEW SECTION

WAC 296-96-02567 ASME A17.1-2.7.6.3.4 Access to governors and brake. (1) For governors that are located in the hoistway, governor access from outside the hoistway is required unless:

(a) The governor is manually reset from the controller;

(b) The governor switches are manually reset from the controller;

(c) A means is available for tripping the governor by either a switch or key from the controller or control room;

(d) A permanent means from the controller or control room is provided that shows the car direction and speed, plus the governor tripping speed;

(e) A means of servicing and inspecting the governor can be performed from inside the hoistway;

(f) Access to the governor is via the cartop working platform or per WAC 296-96-23115; and

(g) Access is safe, convenient and within easy reach for inspection, maintenance and testing purposes and not from the adjacent car.

(2) If governor or brake access is required from outside the hoistway the access panel must:

(a) Be a minimum of twelve inches by twelve inches and a maximum of twenty-four inches by twenty-four inches;

(i) Access openings in a residential hoistway enclosure where full bodily entry is not necessary for rescue operation, maintenance and inspection of components shall be a minimum of ninety-six square inches with a minimum of eight inches on one side and have a maximum width and height of twenty-four by twenty-four inches.

(ii) ASME A17.1-5.3.1.7.7 Where direct observation of the drive machine, suspension means, or brake is not possible from the access opening, a means conforming to the requirements of ASME A17.1-2.7.6.4 shall be provided.

(b) Self-closing and self-locking, security level key outlined in ASME A17.1-8.1 with key in key box (exempt residential for key box);

(c) If located more than sixty inches above the floor provide a work platform that provides safe and convenient access to the panel (exempt residential);

(d) Meet the fire rated requirement of the hoistway;

(e) Cannot be located above the hoistway if a fall hazard into the hoistway is created by the access panel; and

(f) Access must be safe, convenient and within easy reach for inspection, maintenance, and testing procedures.

NEW SECTION

WAC 296-96-02568 ASME A17.1-5.3.1.1 Residential hoistway enclosures. Residential hoistways shall be solidly enclosed throughout their height without grillwork or openings other than for landing or access doors. Enclosures shall be of sufficient strength to support in true alignment the hoistway doors, gates and their locking equipment. The fire resistance rating shall be in accordance with the requirements of the building code. Any exterior windows within the hoistway shall be protected by metal grillwork. Grillwork shall reject a ball seventy-six millimeters (three inches) in diameter and shall be securely fastened from the inside of the hoistway.

Note: See ASME requirements for partially enclosed hoistways.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02580 Are keys required to be on-site? The keys to the machine room and the keys that are necessary to operate the elevator must be located in a locked key retainer box in the elevator lobby at the designated level above the hall buttons, or located by machine room doors at no more than six feet above the floor, provided access to the key box doesn't require passage through locked doors. If in order to meet this requirement the box would be located in an unsecured location (such as the outside portion of a condo), other arrangements shall be accommodated with the written permission of the department.

The key retainer box must be:

- Readily accessible to authorized personnel;
- Clearly labeled "ELEVATOR";
- Securely mounted;
- Equipped with a 1-inch mortise cylinder cam lock with keyway set to a #39504 Fort type key and securely mounted;

Further:

• Keys for access to elevator machine rooms and for operating elevator equipment must be tagged and kept in the key box.

• The box must contain all keys.

• Mechanical hoistway access devices must be located in the key box or machine room.

Note: The cities of Seattle and Spokane may designate their own options for keys and lockbox arrangement via their rule processes. ASME A17.1-2.27.8 Local fire or building code authorities may specify the requirements for a uniform keyed lock box and its location to contain the necessary keys (this will be in addition to the requirements above). Where required, a lock box, including its lock and other components, shall conform to the requirements of UL 1037 (see Part 9). These keys shall be kept on the premises in a location readily accessible to firefighters and emergency personnel, but not where they are available to the public.

EXCEPTION: Residential elevators are exempt from this section.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02595 What are the general requirements for LULA elevators? (1) LULAs may be permitted in churches, private clubs, and buildings listed on the historical register that are not required to comply with accessibility requirements.

(2) ((~~Installation of LULAs in existing buildings that are not required to comply with accessibility requirements will be considered on a case-by-case basis by the department.~~

~~(3)~~)) For LULAs installed according to subsection((~~s~~)) (1) ((~~and (2)~~)) of this section a form provided by the department must be signed by the local building official.

(((~~(4)~~))) (3) LULAs must be equipped with an emergency communication device meeting the requirements of WAC 296-96-02330.

(4) ASME A17.1-5.2.1.7.1 Elevator machine rooms, control rooms, and machinery spaces containing an elevator driving machine not located in the hoistway shall have clear headroom of not less than two thousand one hundred thirty millimeters (eighty-four inches).

(5) All maintenance, examination, and safety tests must be in accordance with ASME A17.1-8.6 and WAC 296-96-23605(3).

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02600 What is required for physically handicapped lifts? (((~~(1) All inclined stairway chairlifts and inclined and vertical wheelchair lifts installed in buildings where the conveyance is not visible at all times must be equipped with a standard electric switch Chicago style lock and #2252 key.~~

~~(2) All inclined stairway chairlifts and inclined and vertical wheelchair lifts installed in residences licensed as group homes must be equipped with a standard electric key switch Chicago style lock and #2252 key.~~

~~(3) All inclined stairway chairlifts and inclined and vertical wheelchair lifts installed in schools, day care centers, churches and other facilities which typically accommodate or provide services for children must also be equipped with a standard electric key switch Chicago style lock and #2252 key.~~

~~(4) Where these conveyances are installed outdoors, they must be equipped with either a standard electric key switch Chicago style lock and #2252 key or a timing device. The timing device must not allow the conveyance to run outside of normal business hours.~~

~~(5) In locations where the conveyance is not visible at all times, the conveyance must be equipped with a means of two-way communication that is capable of communicating with and signaling to a person or service that can respond appropriately at all times.~~

~~**EXEMPTION:** Inclined stairway chairlifts and inclined and vertical wheelchair lifts in private residences are not required to be equipped with key switches.~~

~~(6)~~)) (1) Beginning July 1, 2004, vertical ((~~wheelchair~~)) platform lifts in commercial installations must be equipped with low energy power-operated doors or gates complying with ANSI/BHMA A156.19. Doors and gates shall remain open for twenty seconds minimum. End doors shall be thirty-two inches minimum clear width. Side doors shall be forty-two inches minimum clear width.

EXCEPTION: Lifts having doors or gates on opposite sides shall be permitted to have manual doors and gates.

(((~~(7)~~))) (2) For purposes of ((~~this section~~)) two-way communication, "not visible at all times" includes, but is not limited to, conveyances located in stairwells, auditoriums, and other areas which are not generally in the normal path of travel during the hours that the building is occupied.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-02605 ((~~Are~~)) Private residence inclined stairway chairlifts ((~~required to be permanently wired?~~)). (1) Private residence inclined stairway chairlifts are not required to be permanently wired into a structure. These conveyances may be equipped with a cord and plug. The plug must be directly inserted into a wall receptacle that is protected by a fuse or a circuit breaker at its source and is capable of supporting the additional load on the circuit. The source must be identified either at the receptacle or at the feeder panel. The cord must be secured in a manner that will not create any tripping hazards.

(2) ASME A18.1-7.10.1 Operation of the lift from the top and bottom landings and from the platform shall be controlled by control switches at all stations and by means of the continuous pressure type. Operation of the lift from the intermediate landings shall be controlled by "up" and "down" control switches and by means of the continuous pressure type. Controls shall be one thousand two hundred millimeters (forty-eight inches) maximum and nine hundred fourteen millimeters (thirty-six inches) minimum above the platform floor or facility floor or ground level. Operating devices shall

be designed so that both the "up" and "down" circuits cannot be operated at the same time.

(3) A free passage width of not less than seventeen inches shall be provided. If the chair can be folded when not in use the distance can be measured from the folded chair. When in use there must be a minimum of two inches between any body part and the nearest obstruction.

NEW SECTION

WAC 296-96-02620 Private residence vertical platform lifts. (1) ASME A18.1-5.10.1 Operation of the lift from the top and bottom landings and from the platform shall be controlled by control switches at all stations and by means of the continuous pressure type. Operation of the lift from the intermediate landings shall be controlled by "up" and "down" control switches and by means of the continuous pressure type. Controls shall be one thousand two hundred millimeters (forty-eight inches) maximum and nine hundred fourteen millimeters (thirty-six inches) minimum above the platform floor or facility floor or ground level. Operating devices shall be designed so that both the "up" and "down" circuits cannot be operated at the same time.

(2) NEC 20.51(A) Disconnecting means and controls. Cord and plug connection will be allowed under the following conditions:

(a) The main power source must be from a battery system that is receiving its charge from a cord and plug connected AC battery charger connected to an individual branch circuit;

(b) The circuit supplying the battery charger must be protected by a ground fault circuit protector (GFCI breaker);

(c) The receptacle used to connect to the battery charger must have a cover that meets the requirements of the National Electric Code (NEC) 406.8(b);

(d) The cord must be:

(i) Hard service rated;

(ii) Listed by an electrical testing laboratory approved by the department of labor and industries electrical program;

(iii) In compliance with the requirements of the NEC 400; and

(iv) Properly secured at least every twenty inches, without presenting a tripping hazard, and be limited to twelve feet in length from the battery charger.

(e) A sign must be posted at both the AC and DC source of power disconnecting means that states "warning - parts of the control panel are not de-energized by this switch"; and

(f) The DC source of power must have a disconnect located on the exterior and within site of the lift, be lockable, identified by the available voltage, and labeled per NEC 110.22.

NEW SECTION

WAC 296-96-02625 Private residence incline platform lifts. ASME A18.1-6.10.1 Operation of the lift from the top and bottom landings and from the platform shall be controlled by control switches at all stations and by means of the continuous pressure type. Operation of the lift from the intermediate landings shall be controlled by "up" and "down" control switches and by means of continuous pressure type. Controls shall be one thousand two hundred millimeters (forty-eight inches) maximum and nine hundred fourteen millimeters (thirty-six inches) minimum above the platform floor, facility floor, or ground level. Operating devices shall be designed so that both the "up" and "down" circuits cannot be operated at the same time.

NEW SECTION

WAC 296-96-02630 Commercial vertical and incline platform lifts. (1) ASME A18.1-2.10.1 and ASME A18.1-3.10.1 Operation of the lift from the top and bottom landing(s) and from the platform shall be controlled by control switches at all stations and by means of the continuous pressure type. Operation of the lift from the intermediate landing(s) shall be controlled by "up" and "down" control switches and by means of the continuous pressure type. Controls shall be one thousand two hundred millimeters (forty-eight inches) maximum and nine hundred fourteen millimeters (thirty-six inches) minimum above the platform floor, facility floor, or ground level. Operating devices shall be designed so that both the "up" and "down" circuits cannot be operated at the same time.

(2) ASME A18.1-4.1.1 Incline commercial platform lifts in new and existing buildings must have a clear passage width of not less than twenty inches. If the platform can be folded when not in use, the distance shall be measured from the folded position to the nearest obstruction.

NEW SECTION

WAC 296-96-02640 Incline commercial stairway chair lifts. (1) ASME A18.1-2.10.1 and ASME A18.1-3.10.1 Operation of the lift from the top and bottom landing(s) and from the platform shall be controlled by control switches at all stations and by means of the continuous pressure type. Operation of the lift from the intermediate landing(s) shall be controlled by "up" and "down" control switches and by means of the continuous pressure type. Controls shall be one thousand two hundred millimeters (forty-eight inches) maximum and nine hundred fourteen millimeters (thirty-six inches) minimum above the platform floor, facility floor, or ground level. Operating devices shall be designed so that both the "up" and "down" circuits cannot be operated at the same time.

(2) ASME A18.1-4.1.1 Incline commercial stairway chair lifts in new and existing buildings must have a clear passage width of not less than twenty inches. If the seat can be folded when not in use, the distance shall be measured from the folded position to the nearest obstruction.

PART C1 - MINIMUM STANDARDS FOR ((~~ALL~~)) NEW AND ALTERED MATERIAL LIFTS

NEW SECTION

WAC 296-96-05009 What are the requirements for existing material lifts? Material lifts must comply with the rules adopted by the department that were in effect at the time the conveyance was permitted, regardless of whether the rule(s) has been repealed, unless any new rule specifically

states that it applies to all conveyances regardless of when the conveyance was permitted. Copies of previous rules adopted by the department are available upon request.

If the department determines that a material lift was installed without a permit and/or without an inspection, the conveyance will be required to comply with the current rules adopted by the department.

AMENDATORY SECTION (Amending WSR 04-12-047, filed 5/28/04, effective 6/30/04)

WAC 296-96-05070 What car enclosure requirements apply to lifts? (1) Lift cars must have their sides enclosed with solid panels or openwork that will reject a ((~~2~~)) two-inch diameter ball. On the car sides where there is no gate (door), the enclosure must extend to a height of at least ((~~48~~)) forty-eight inches from the floor or to a height necessary to enclose the materials that are being moved, whichever is greater. On the car side next to the counterweight runway, the enclosure must extend vertically to the car top or underside of the car crosshead and horizontally to at least ((~~6~~)) six inches on each side of the runway.

(2) Material lifts in unenclosed hoistways must have a car gate that is constructed of the same material as the car enclosure.

(3) The gate, if required or supplied, must be the same height as the sidewalls of the car enclosure and must be provided with a latching device and electrical contact to prevent the operation of the motor and brake if open more than two inches.

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

WAC 296-96-05080 How much running clearance is permitted between a car sill and a hoistway? Running clearance between a car sill and a hoistway enclosure must not exceed ((~~2~~)) two inches. If the lift is supplied with a car door or gate, the running clearance is measured from the car sill to the hoistway sill.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-05140 What requirements apply to car safeties? Car safeties must be used on all material lifts that are suspended by wire ropes or chains. They must be able to stop and sustain a car carrying ((~~125~~)) one hundred twenty-five percent of its rated load. This shall be demonstrated during the acceptance inspection and test procedure with a free-fall drop, minimum two safeties at a time (in cases of four post safeties). On lifts driven by rack and pinion machines:

(1) Car safeties must be able to stop and sustain a car carrying one hundred twenty-five percent of its rated load.

(2) Car safeties will consist of a freely rotating safety pinion, an overspeed governor and a safety device which may be mounted on the car.

(((~~2~~))) (3) The rotating pinion driving an overspeed governor will travel on a stationary rack which is vertically mounted in the hoistway.

(((~~3~~))) (4) The governor will actuate the safety device when the downward speed of the car reaches the tripping speed and will bring the car to a gradual stop.

(((~~4) Car safeties must be able to stop and sustain a car carrying one hundred twenty-five percent of its rated load.~~)))

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

WAC 296-96-05240 What are the minimum maintenance requirements for lifts? All owners, or designated owner representatives, of material lifts described in this chapter are responsible for the maintenance of their lifts and parts. Minimum maintenance requirements are:

(1) All lifts described in this chapter and their parts must be maintained in a safe condition. Maintenance, examinations, and safety tests are to be performed and documented to the applicable sections of WAC 296-96-23601 through 296-96-23610; and

(2) All devices and safeguards that are required by this chapter must be maintained in good working order.

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

WAC 296-96-07035 What are the minimum maintenance requirements for inclined private residence elevators? Owners of inclined private residence elevator are responsible for the following:

(1) Maintaining elevators and mechanical parts in a safe condition; and

(2) Ensuring that all devices and safeguards required by these regulations are maintained in good working order.

The department recommends maintenance, examinations, and safety tests be performed and documented to the applicable sections of WAC 296-96-23601 through 296-96-23610.

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

WAC 296-96-08035 What are the minimum maintenance requirements for inclined private residence elevators for transporting property? Owners of inclined private residence elevators for transporting property are responsible for ensuring that:

(1) Elevators and their parts are maintained in a safe condition; ((~~and~~))

(2) All devices and safeguards required by these regulations are maintained in good working order; and

(3) The department recommends maintenance, examinations, and safety tests be performed and documented to the applicable sections of WAC 296-96-23601 through 296-96-23610.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-09001 What regulations apply to personnel hoists? All personnel hoist installations, maintenance, repair and tests must comply with the American

National Standard Institute ANSI A10.4-((~~2004~~)) 2007 edition ((~~or the latest published edition adopted by ANSI,~~)) Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

EXCEPTION: Lifts and hoists for persons and material that are erected temporarily for use during construction and maintenance work and are designed in one of the following ways:
(1) Powered platforms used for and temporarily constructed in conjunction with exterior work on building facades or to erect scaffolding, not intended to move personnel or material from one landing to another. Not intended to move personnel or materials into or out of a building or structure; and
(2) Portable self-propelled lifts used by workers.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-10001 What regulations apply to material hoists? All material hoist installations, maintenance, repair, and tests must comply with the American National Standard Institute ANSI A10.5-1992 edition ((~~or the latest published edition adopted by ANSI,~~)) Safety Requirements for Material Hoists.

EXCEPTION: Lifts and hoists for material that are erected temporarily for use during construction work only and are designed in one of the following ways:
(1) Powered platforms used for and temporarily constructed in conjunction with exterior work on building facades or to erect scaffolding, not intended to move material from one landing to another; and
(2) Portable lifts for material only.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-11001 What regulations apply to belt manlifts? WAC 296-96-11016 through 296-96-11080 apply to all existing belt manlifts.

Belt manlifts installed between July 1, 2004, and January 1, 2008, must meet the requirements in ASME A90.1-1997.

Belt manlifts installed between January 1, 2008, and December 31, 2013, must meet the requirements in ASME A90.1-2009.

After the effective date of these rules all belt manlift installations and alterations must meet ASME A90.1-((~~2003~~)) 2009.

All belt manlifts must be maintained, inspected and tested to conform to section 8 and appendix II of ASME A90.1-((~~2003~~)) 2009.

Maintenance inspection report shall be kept in a secure location within the building the belt manlift serves.

NEW SECTION

WAC 296-96-13136 What are the minimum maintenance requirements for electric manlifts? Owners of electric manlifts are responsible for ensuring that:

(1) Elevators and their parts are maintained in a safe condition;

(2) All devices and safeguards required by these regulations are maintained in good working order; and

(3) Maintenance, examinations, and safety tests be performed and documented to the applicable sections of WAC 296-96-23601 through 296-96-23610.

NEW SECTION

WAC 296-96-14011 What are the minimum maintenance requirements for hand powered manlifts? Owners of hand powered manlifts are responsible for ensuring that:

(1) Elevators and their parts are maintained in safe condition;

(2) All devices and safeguards required by these regulations are maintained in good working order; and

(3) Maintenance, examinations and safety tests are performed and documented to the applicable sections of WAC 296-96-23601 through 296-96-23610.

NEW SECTION

WAC 296-96-16011 What are the minimum maintenance requirements for casket lifts? Owners of casket lifts are responsible for ensuring that:

(1) The lift and their parts are maintained in a safe condition; and

(2) All devices and safeguards required by these regulations are maintained in good working order.

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

WAC 296-96-16210 What specific requirements apply to hydraulic ((~~elevators~~)) casket lifts? (1) All hydraulic elevators must be a plunger type with the plunger securely attached to the car platform.

(2) Plungers composed of more than one section must have the joints designed and constructed to carry in tension the weight of all plunger sections below the joints.

(3) Plungers must be provided with solid metal stops to prevent the plunger from traveling beyond the limits of the cylinder. Stops must be designed and constructed so as to stop the plunger from maximum speed in the "up" direction under full pressure without damage to the hydraulic system.

(4) Any leaking hydraulic oil must be collected.

NEW SECTION

WAC 296-96-18011 What are the minimum maintenance requirements for boat launch elevators? Owners of boat launch elevators are responsible for ensuring that:

(1) Elevators and their parts are maintained in a safe condition; and

(2) All devices and safeguards required by these regulations are maintained in good working order.

NEW SECTION

WAC 296-96-20010 What are the minimum maintenance requirements for mechanized parking garage

equipment? Owners of mechanized parking garage equipment are responsible for ensuring that:

(1) Elevators and parts are maintained in a safe condition; and

(2) All devices and safeguards required by these regulations are maintained in good working order.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-23100 Are keys required to be on-site? Yes.

(1) The keys to the machine room and the keys that are necessary to operate the elevator must be located in a locked key retainer box in the elevator lobby; or located by machine room doors at no more than six feet above the floor, provided access to the key box doesn't require passage through locked doors. The key retainer box must be:

(a) Readily accessible to authorized personnel;

(b) Clearly labeled "Elevator"; and

(c) Equipped with a 1-inch cylinder cam lock key #39504.

Further:

Keys for access to elevator machine rooms and for operating elevator equipment must be tagged and kept in the key box.

The key box must contain all keys necessary for inspections of the elevator.

Mechanical hoistway access devices must be kept in the key box or machine room.

(2) The department may approve existing retainer boxes provided they are:

(a) Readily accessible to authorized personnel;

(b) Clearly labeled "Elevator"; and

(c) The lock must be either a 1-inch cylinder cam lock key #39504 or a combination lock. The combination for the lock must be on record with the department.

Deviations from this section due to security concerns must be approved by the department via a variance request.

Note: The cities of Seattle and Spokane may designate their own options for keys and lock box arrangement via their rule processes.

(3) ASME A17.1-2.27.8 Local fire or building code authorities may specify the requirements for a uniform keyed lock box and its location to contain the necessary keys (this will be in addition to the requirements listed in subsection (1) or (2) of this section). Where required, a lock box, including its lock and other components, shall conform to the requirements of UL 1037 (see Part 9). These keys shall be kept on the premises in a location readily accessible to firefighters and emergency personnel, but not where they are available to the public.

(4) ASME A17.1 Part 8 contains general requirements for new and existing equipment. Except reference ASME A17.1-2.27.8 shall not apply to phase one and two key switches installation on existing elevators installed prior to the adoption of this code unless required by the local code official.

((~~Subpart I~~
~~Hoistways and Related Construction for Electric and Hydraulic Elevators~~))

AMENDATORY SECTION (Amending WSR 04-12-047, filed 5/28/04, effective 6/30/04)

WAC 296-96-23101 What ((~~is the scope of Subpart I~~)) are the conveyance number requirements? ((~~(1) Subpart I, Hoistways and Related Construction for Electric and Hydraulic Elevators, is the minimum standard for all existing hydraulic and electric elevators. It applies to other equipment only as referenced in the applicable part.~~

~~(2) This subpart does not apply to elevators located in grain terminals, residential elevators, or special purpose elevators.~~)) Conveyance numbers shall be permanently painted or etched to the controller or if space does not allow, the disconnect switch. The numbers shall be legible and at a minimum of one-half inch in height or as directed by the authority having jurisdiction.

Subpart I
Hoistways and Related Construction for Electric and Hydraulic Elevators

NEW SECTION

WAC 296-96-23105 What is the scope of Subpart I? (1) Subpart I, Hoistways and Related Construction for Electric and Hydraulic Elevators, is the minimum standard for all existing hydraulic and electric elevators. It applies to other equipment only as referenced in the applicable part.

(2) This subpart does not apply to elevators located in grain terminals, residential elevators, or special purpose elevators.

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

WAC 296-96-23216 What requirements apply to the lining materials used on passenger car enclosures? Materials used for passenger car linings must meet the following specifications:

(1) Carpeting without padding may be used for interior finishes provided that it has a Class I rating, a flame spread of 25 or less which must include all assembly components except the adhesive. The adhesive must be a slow-burning type.

(2) Slow-burning combustible materials, other than carpet, may be used for interior finishes provided the materials have a Class II rating or better (flame spread of 75 of less), which must include all assembly components other than the adhesive. Materials must be firmly bonded flat to the enclosure and must not be padded. Fabric with spray-type fireproofing must not be installed in elevators.

(a) Equivalent ratings in watts per centimeter squared as derived in the radiant panel test are also acceptable.

(b) .45 watts/cm squared or higher is equivalent to Class I or better.

(c) .22 watts/cm squared or higher is equivalent to Class II or better.

(d) In the radiant test, the higher the number the better the flame resistance.

(e) In the Class I and II system, the lower the number, the better the flame resistance.

(f) Smoke density of materials must be less than 450 when tested in accordance with UBC Standard No. 42.-1.

(3) Certification that the materials and assembly meet these requirements must be submitted to the building official.

Note: These specifications do not apply to new or alteration permits (see ASME code for requirements).

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

WAC 296-96-23408 How much clearance is required between skirt panels and step treads? The clearance on each side of the steps between the step tread and the adjacent skirt panel must be no more than 3/16 inch, unless otherwise stated in ASME A17.1-8.6.8.

Subpart VI
Alterations, Repairs ((~~and~~)), Maintenance, and Testing

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-23600 What is the scope of Part VI, Alterations, Repairs and Maintenance? Subpart VI, Alterations, Repairs and Maintenance, applies to periodic inspections, tests, alterations, ((~~and~~)) preventive maintenance, and routine examinations. The applicable code references are: ASME A17.1-Part 8, ASME A18.1-Part 10, ASME A90.1-Part 8, and appendix 2, ANSI A10.4-Part 26 & 27, ANSI A10.5-Part 4, and other requirements in this chapter.

NEW SECTION

WAC 296-96-23601 ASME A17.1-8.6.1.2.1 General maintenance requirements for conveyances regulated by ASME A17.1 Part 8. (1) ASME A17.1-8.6.1.2.1(4) All persons authorized per chapter 70.87 RCW and this chapter to perform maintenance shall have detailed, code required written procedures including, but not limited to, check out, inspection, testing, maintenance, and examination, which shall be in the mechanic's possession and available upon request to the department's personnel.

(2) ASME A17.1-8.6.1.2.1(4)(c) The maintenance records required by ASME A17.1-8.6.1.4 shall be kept at a central location either in the machine/control room, space or within the building where the conveyance exists. Other on-site locations as permitted by the department.

(3) ASME A17.1-8.6.1.2.1(d) The maintenance. Control program shall be accessible to the elevator owner, the owner's representative, inspector, and elevator service personnel and document compliance with 8.6, applicable sections of 8.11, and this chapter.

(4) Devices that remotely interact with conveyances covered by this chapter can create a hazard when used to effect a change in its controls. Therefore, any conveyance found operating with a device that can directly effect a change in its controls from a remote location is prohibited unless it is operated under the direct on-site supervision of a person who meets the definition of "licensed elevator mechanic."

Note: Remote operation controls, operated by building personnel located within the building, may be installed for security purposes upon approval of installation or alteration permit. Table N-2, monitoring is for information only and shall not be a substitute for on-site inspections or examinations.

NEW SECTION

WAC 296-96-23602 ASME A17.1-8.6.1.4 Maintenance records. (1) ASME A17.1-8.6.1.4.1 Maintenance records shall document compliance with ASME A17.1-8.6 and the applicable parts of ASME A17.1-8.11 (see WAC 296-96-23605) and include records on the activities listed in ASME A17.1-8.6.1.4.1 (a) through (e). In addition, all maintenance, examinations, and safety tests shall be demonstrate with interval(s). Each task shall be defined by code reference number and month(s) the task is to be performed. A signature by the authorized mechanic shall demonstrate each completed task (initials are acceptable with a legible signature page). The layout for the records shall be similar to the sample supplied by the department on the elevator program web site.

(2) ASME A17.1-8.6.1.4.2 Record availability:

(a) Records shall be available in hard copy, maintained, and kept current, upon completion of the task(s);

(b) The maintenance records shall be in the machine room or other on-site location and immediately available to the elevator owner(s) and representative and conspicuously posted for the inspector and elevator personnel;

(c) Retention shall be for a period of six years; and

(d) The records must be available for an additional year for each category five test extended beyond twelve months.

(3) The owner or representative is responsible for installing and maintaining updated records in the machine room. The outdated log and records shall remain conspicuously posted in the machine room per the schedule in subsection (2) of this section. The records are the property of the owner and shall be made available to all elevator personnel.

NEW SECTION

WAC 296-96-23603 ASME A17.1-8.6.1.6.3(a) Wiring diagrams. Up-to-date wiring diagrams detailing all circuits including, but not limited to, electrical protective devices (see ASME A17.1-2.26.2) and critical operating circuits (see ASME A17.1-2.26.3) shall be available in the machinery space, machine room, control space, or control room as appropriate to the installation. Wiring diagrams shall not be removed from the machinery space, machine room, control space, or control room.

NEW SECTION

WAC 296-96-23604 ASME A17.1-8.6.1.7 Periodic tests. (1) The frequency of periodic tests shall be established by the department as required by ASME A17.1-8.11.1.3.

(a) Category one tests shall be performed twelve months from the previous category one tests.

(b) Category three tests shall be performed thirty-six months from the previous category three tests.

(c) Category five tests shall be performed sixty months from the previous category five tests.

(2) The tests shall be performed no later than thirty days past their due date. The owner or agent must seek written permission from the department to deviate from the schedule.

A civil penalty of five hundred dollars per month may be applied for noncompliance.

(3) ASME A17.1-8.6.1.7 The authority having jurisdiction may require that periodic tests or examination(s) be witnessed by an inspector employed by the authority having jurisdiction.

(4) Tag placement and use shall be in accordance with ASME A17.1-8.6.1.7.2 periodic test tags and the retention shall be equivalent to the maintenance control program records.

NEW SECTION

WAC 296-96-23605 ASME A17.1-8.6.4 Maintenance, examination and testing of elevators. (1) The maintenance, examination, and testing of electric elevators shall conform to ASME A17.1-8.6.1 through 8.6.4 and the applicable sections of 8.11.2 as amended below.

(a) ASME A17.1-8.11.2.1 Periodic examination requirements for electrical elevators. Service providers shall include the following when identifying components or systems, or both, that shall be examined if installed.

(b) ASME A17.1-8.11.2.1.1 Inside car:

(i) Door reopening device;

(ii) Stop switches;

(iii) Operating control devices*;

(iv) Car floor and landing sill**;

(v) Car lighting**;

(vi) Car emergency signal;

(vii) Car door or gate;

(viii) Door closing force;

(ix) Power closing of doors or gates;

(x) Power opening of doors or gates;

(xi) Car enclosure*;

(xii) Emergency exit;

(xiii) Ventilation*;

(xiv) Rated load, platform area, and data plate*;

(xv) Restricted opening of car or hoistway doors;

(xvi) Car ride*;

(xvii) Door monitoring systems; and

(xviii) Stopping accuracy*.

(c) ASME A17.1-8.11.2.1.2 Machine room/control room:

(i) Equipment exposure to weather;

(ii) Means of access**;

(iii) Headroom**;

(iv) Means necessary for tests;

(v) Inspection and test panel;

(vi) Lighting and receptacles**;

(vii) Enclosure of machine room/control room**;

(viii) Ventilation;

(ix) Pipes, wiring, and ducts**;

(x) Guarding of equipment;

(xi) Numbering of elevators, machines, and disconnect switches;

(xii) Maintenance path and maintenance clearance**;

(xiii) Stop switch;

(xiv) Disconnecting means and control;

(xv) Controller wiring, fuses, grounding, etc.;

(xvi) Machinery supports and fastenings;

(xvii) Drive machine brake;

(xviii) Traction drive machines;

(xix) Gears, bearings, and flexible connections;

(xx) Winding drum machine;

(xxi) Belt or chain-drive machine;

(xxii) Absorption of regenerated power;

(xxiii) Traction sheaves;

(xxiv) Secondary and deflector sheaves;

(xxv) Rope fastenings;

(xxvi) Operating devices;

(xxvii) Code data plate**;

(xxviii) AC drives from a DC source;

(xxix) Slack rope devices;

(xxx) Wiring diagrams;

(xxxi) Rope retainers or restraints for seismic risk zones; and

(xxxii) Seismic and displacement switches.

(d) ASME A17.1-8.11.2.1.3 Top-of-car:

(i) Top-of-car stop switch;

(ii) Car top light and outlet;

(iii) Top-of-car operating device working platforms;

(iv) Top-of-car clearance and refuge space**;

(v) Top counterweight clearance;

(vi) Car, overhead, and deflector sheaves;

(vii) Crosshead data plate**;

(viii) Top emergency exit;

(ix) Floor and emergency identification numbering**;

(x) Hoistway construction**;

(xi) Hoistway smoke control**;

(xii) Pipes, wiring, and ducts**;

(xiii) Windows, projections, recesses, and setbacks**;

(xiv) Hoistway clearance;

(xv) Multiple hoistways**;

(xvi) Traveling cables and junction boxes;

(xvii) Door and gate equipment;

(xviii) Car frame and stiles;

(xix) Guide rails fastening and equipment;

(xx) Governor rope;

(xxi) Governor releasing carrier;

(xxii) Fastening and hitch plate;

(xxiii) Suspension means;

(xxiv) Compensation means;

(xxv) Machinery space/control space;

(xxvi) Working areas on the car top;

(A) Means to prevent unexpected movement.

(B) Unexpected car movement device.

(C) Operating instructions for unexpected car movement device.

(D) Operating instructions for egress and reentry procedure;

(xxvii) Equipment exposure to weather;

(xxviii) Machinery supports and fastenings;

(xxix) Guarding of exposed auxiliary equipment;

(xxx) Anchoring of beams and supports in seismic risk zone 2 or greater;

(xxxi) Rope retainers and snag guards in seismic risk zone 2 or greater;

(xxxii) Position restraints in seismic risk zone 2 or greater;

(xxxiii) Car and counterweight guide rails system in seismic risk zone 2 or greater;

(xxxiv) For seismic risk zones 2 or greater, horizontal clearance for car and counterweight, snag-point clearance and rail fastening;

(xxxv) Seismic risk zone 2 or greater rope retainers/restraints and snag guards;

(xxxvi) Seismic risk zone 2 or greater rope retainer and snag guard for compensating ropes or chains and compensating tension sheave fastening; and

(xxxvii) Sheaves with nonmetallic groove surfaces.

(e) ASME A17.1-8.11.2.1.4 Outside hoistway:

(i) Car platform guard;

(ii) Hoistway doors;

(iii) Vision panels*;

(iv) Hoistway door locking devices;

(v) Access to hoistway;

(vi) Sequence operation;

(vii) Hoistway enclosure;

(viii) Elevator parking devices;

(ix) Emergency and access hoistway openings;

(x) Separate counterweight hoistway;

(xi) Means necessary for tests;

(xii) Inspection and test panel (ASME A17.1-2.7.6.5), inspection operation (ASME A17.1-2.26.1.4.1), and inspection operation with open door circuits; and

(xiii) Equipment exposure to weather.

(f) ASME A17.1-8.11.2.1.5 Pit:

(i) Pit access, lighting, stop switch and condition;

(ii) Bottom clearance and runby;

(iii) Traveling cables;

(iv) Compensating chains, ropes, and sheaves;

(v) Car frame and platform;

(vi) Machinery space/control space;

(vii) Working areas in the pit;

(A) Means to prevent unexpected movement.

(B) Unexpected car movement device.

(C) Operating instructions for unexpected car movement device.

(D) Operating instructions for egress and reentry procedure;

(viii) Equipment exposure to weather;

(ix) Machinery supports and fastenings;

(x) Guarding of exposed auxiliary equipment; and

(xi) Pit inspection operation.

(g) ASME A17.1-8.11.2.1.7 Working platform:

(i) Working platforms; operating instructions;

(ii) Retractable stops; retractable stop electrical device; and

(iii) Inspection operation.

Note: (*) May be combined with other items on the log.
(**) A visual component that must be reported to the owner.

(2) The maintenance, examination, and testing of hydraulic elevators shall conform to ASME A17.1-8.6.1 through ASME A17.1-8.6.3 and the applicable requirements of ASME A17.1-8.6.4, ASME A17.1-8.6.5, and ASME A17.1-8.11.3, as amended below.

(a) Periodic examination requirements for hydraulic elevators. Service providers shall include the following when identifying components or systems, or both, that shall be examined if installed.

(b) ASME A17.1-8.11.3.1.1 Inside the car:

(i) Door reopening device;

(ii) Stop switches;

(iii) Operating control devices*;

(iv) Sill and car floor**;

(v) Car lighting and receptacles**;

(vi) Car emergency signal;

(vii) Car door or gate;

(viii) Door closing force;

(ix) Power closing of doors or gates;

(x) Power opening of doors or gates; car enclosure*;

(xi) Emergency exit;

(xii) Ventilation*;

(xiii) Signs and operating device symbols;

(xiv) Rated load, platform area, and data plate;

(xv) Restricted opening of car or hoistway doors;

(xvi) Car ride*;

(xvii) Door monitoring system; and

(xviii) Stopping accuracy*.

(c) ASME A17.1-8.11.3.1.2 Machine room/control room:

(i) Equipment exposure to weather;

(ii) Means of access**;

(iii) Headroom**;

(iv) Means necessary for tests;

(v) Inspection and test panel;

(vi) Lighting and receptacles**;

(vii) Enclosure of machine room/spaces and control room/spaces**;

(viii) Ventilation and heating;

(ix) Pipes, wiring, and ducts**; guarding of equipment;

(x) Numbering of elevators, machines, and disconnect switches;

(xi) Maintenance path and maintenance clearance**;

(xii) Stop switch;

(xiii) Disconnecting means and control;

(xiv) Controller wiring, fuses, grounding, etc.;

(xv) Hydraulic power unit;

(xvi) Tanks**;

(xvii) Recycling operation; and

(xviii) Wiring diagrams.

(d) ASME A17.1-8.11.2.1.3 Top of car:

(i) Top-of-car stop switch;

(ii) Car top light and outlet;

(iii) Top-of-car operating device and working platforms;

(iv) Top-of-car clearance and refuge space**;
(v) Top emergency exit;
(vi) Floor and emergency identification numbering**;
(vii) Hoistway construction*;
(viii) Hoistway smoke control**;
(ix) Pipes, wiring, and ducts**;
(x) Windows, projections, recesses, and setback**;
(xi) Hoistway clearances**;
(xii) Multiple hoistways**;
(xiii) Traveling cables and junction boxes;
(xiv) Door and gate equipment;
(xv) Car frame and stiles;
(xvi) Guide rails fastening and equipment;
(xvii) Governor rope;
(xviii) Wire rope fastening and hitch plate;
(xix) Suspension rope;
(xx) Slack rope device;
(xxi) Traveling sheave;
(xxii) Crosshead data plate**;
(xxiii) Equipment exposure to weather;
(xxiv) Machinery supports and fastenings; and
(xxv) Guarding of equipment.
(e) ASME A17.1-8.11.3.1.4 Outside hoistway:
(i) Car platform guard;
(ii) Hoistway doors;
(iii) Vision panels*;
(iv) Hoistway door locking devices;
(v) Access to hoistway;
(vi) Power closing of hoistway doors;
(vii) Sequence operation;
(viii) Hoistway enclosure*;
(ix) Elevator parking devices;
(x) Emergency doors in blind hoistways;
(xi) Inspection and test panel (ASME A17.1-3.7.1 and ASME A17.1-2.7.6.5), inspection operation (ASME A17.1-2.26.1.4.1), and inspection operation with open door circuits (ASME A17.1-2.26.1.5); and
(xii) Equipment exposure to weather.
(f) ASME A17.1-8.11.3.1.5 Pit:
(i) Pit access, lighting, stop switch, and condition;
(ii) Bottom clearance, runby, and minimum refuge space**;
(iii) Plunger and cylinder;
(iv) Traveling cables;
(v) Car frame and platform;
(vi) Supply piping;
(vii) Governor rope tension device;
(viii) Equipment exposure to weather;
(ix) Machinery supports and fastenings;
(x) Guarding of exposed auxiliary equipment;
(xi) Pit inspection operation; and
(xii) Seismic overspeed valve and pipe support.

Note: (*) May be combined with other items on the log.
(**) A visual component that must be report to the owner.

(g) If it is determined the hydraulic cylinders system is not being maintained per ASME A17.1-8.6.5.7 and ASME A17.1-8.6.5.14, cylinders installed below ground shall conform to ASME A17.1-3.18.3.4 or to ASME A17.1-8.6.5.8(a) or ASME A17.1-8.6.5.8(b).

(h) The relief-valve adjustment shall be examined to ensure that the seal is intact. If the relief-valve seal is not intact, checks shall be conducted in accordance with ASME A17.1-8.6.5.14.1 and the state hydraulic overpressure form shall be used to document compliance. The form shall be left on-site and located in the machine room in a conspicuous location.

(3) The maintenance and examination of dumbwaiter, rack-and-pinion, screw-column, hand, incline, limited use limited application, private residence*, power sidewalk, rooftop, special purpose, and shipboard and construction elevators shall conform to ASME A17.1-8.6.1 through ASME A17.1-8.6.3 and the applicable requirements of ASME A17.1-8.6 and ASME A17.1-8.11 as amended in this chapter.

Note: (*) Chapter 70.87 RCW exempts private resident elevators from periodic inspections, but these maintenance guidelines provide the proper outline for the level of service that should be provided.

(4) The maintenance of material lifts without automatic transfer devices, hand pull and electric manlift, residential incline elevators shall conform to ASME A17.1-8.6.1 through ASME A17.1-8.6.3 and the applicable requirements of ASME A17.1-8.6 and ASME A17.1-8.11, as amended in this chapter*.

Maintenance, examination and test requirements shall only apply to the corresponding installation requirements in chapter 296-96 WAC.

Note: (*) Chapter 70.87 RCW exempts private resident elevators from periodic inspections, but these maintenance guidelines provide the proper outline for the level of service that should be provided.

(5) Periodic examination requirements for conveyances outlined in WAC 296-96-23605 (3) and (4). Service providers shall include the following when identifying components or systems, or both, that shall be examined if installed.

(a) ASME A17.1-8.11.5.1 Sidewalk elevator, WAC 296-96-23605 (1) or (2).

(b) ASME A17.1-8.11.5.2 Private resident elevators, WAC 296-96-23605 (1) or (2)*.

(c) ASME A17.1-8.11.5.3 Hand elevators, WAC 296-96-23605(1).

(d) ASME A17.1-8.11.5.4 Dumbwaiters, WAC 296-96-23605 (1) or (2).

(e) ASME A17.1-8.11.5.5 Material lifts and dumbwaiters with automatic transfer devices, WAC 296-96-23605 (1) or (2).

(f) ASME A17.1-8.11.5.6 Special purpose personnel elevators, WAC 296-96-23605 (1) or (2).

(g) ASME A17.1-8.11.5.7 Inclined elevators, WAC 296-96-23605 (1)(a) through (2) or (3).

(h) ASME A17.1-8.11.5.8 Shipboard elevators, WAC 296-96-23605 (1) or (2).

(i) ASME A17.1-8.11.5.9 Screw-column elevators, WAC 296-96-23605 (1) or (2).

(j) ASME A17.1-8.11.5.10 Rooftop elevators, WAC 296-96-23605 (1) or (2).

(k) ASME A17.1-8.11.5.11 Rack-and-pinion elevators, WAC 296-96-23605 (1) and (2).

(l) ASME A17.1-8.11.5.12 Limited-use/limited-application elevators, WAC 296-96-23605 (1) or (2).

(m) ASME A17.1-8.11.5.13 Elevators used for construction, WAC 296-96-23605 (1) or (2).

(n) These conveyances shall be subject to the corresponding ASME A17.1-8.11 examination requirements as applicable (see ASME A17.1 for sections references). The applicable items above shall be documented on the required records.

Note: Chapter 70.87 RCW exempts these elevators from periodic inspections, but these examination guidelines provide the proper outline for the level of service that should be provided.

(6) The maintenance and examination of escalators shall conform to ASME A17.1-8.6.1 through ASME A17.1-8.6.3 and ASME A17.1-8.6.8 and the applicable sections of ASME A17.1-8.11.4. The maintenance and examination of moving walks shall conform to ASME A17.1-8.6.1 through ASME A17.1-8.6.3, ASME A17.1-8.6.9 and the applicable sections of ASME A17.1-8.11.4, as amended below.

(a) Periodic examination requirements for escalators and moving walks: Service providers shall include the following when identifying components or systems, or both, that shall be examined if installed.

(b) ASME A17.1-8.11.4.1 Escalators and moving walks:

(i) General fire protection;

(ii) Geometry;

(iii) Entrance and egress;

(iv) Lighting;

(v) Caution signs;

(vi) Combplate;

(vii) Deck barricade guard and antislide devices*;

(viii) Steps and treadway;

(ix) Operating devices;

(x) Skirt obstruction devices;

(xi) Handrail entry device;

(xii) Egress restriction device;

(xiii) Balustrades;

(xiv) Ceiling intersection guards*;

(xv) Skirt panels;

(xvi) Outdoor protection*;

(xvii) Additional stop switch(es);

(xviii) Controller and wiring; and

(xix) Code data plate**, other: Annual clean down WAC 296-96-23610(7).

Note: (*) May be combined with other items on the log.
(**) A visual component that must be reported to the owner.

NEW SECTION

WAC 296-96-23606 ASME A17.1-8.11 Covers periodic inspections, examinations, and tests of existing ASME A17.1 installations. (1) ASME A17.1-8.11.1.1.1:

(a) Annual inspections shall be made by an inspector employed by the department having jurisdiction;

(b) The inspector shall submit a signed written report to the department containing the following information:

(i) Date of inspection; and

(ii) Code deficiencies noted during the inspection and a statement as to the corrective action to be taken, if any.

(2) Periodic or routine examinations shall be made by a person authorized by the department.

(a) Persons authorized are licensed mechanics and other authorized persons under RCW 70.87.270.

(b) The authorized mechanic shall submit a signature on the maintenance control record containing the following information:

(i) Date of examination(s);

(ii) ASME A17.1-8.11 components or systems that have been examined and performed according to this chapter;

(iii) Code deficiencies noted during the examination and a statement on the repair or replacement log as to corrective action taken, if any.

(3) ASME A17.1-8.11.1.4 Installation placed out-of-service.

(a) Maintenance, examinations, and safety tests shall not be required when an installation is placed "in red tag status." All code required maintenance, examinations, and safety tests must be up to date, prior to removal of the red tag.

(b) A conveyance in red tag status for two years or more shall be subject to witnessing by the inspector for the category tests due and may include ASME A17.1-8.11 items, before being placed back in service.

(c) Annual operating certificate, maintenance, examinations, inspections, and tests shall not be required when an installation is placed in "decommissioned status."

AMENDATORY SECTION (Amending WSR 08-23-085, filed 11/18/08, effective 12/19/08)

WAC 296-96-23610 What requirements apply to routine examinations and periodic ((~~inspections and~~)) or category 01, 03, and 05 safety tests? The owner ((~~or the owner's agent~~)) must ensure that her/his conveyances are ((~~inspected~~)) routinely examined and annually safety tested ((~~on a periodic annual basis~~)) by a person qualified to perform such services. All conveyances must be tested to the applicable code(s) by an elevator mechanic licensed in the appropriate category for the conveyance being tested. (((~~See appendix N in ASME A17.1.~~)

~~(1) For annual testing of electric, hydraulic, and roped hydraulic elevators, a log indicating the date of testing with all pertinent data included must be posted in the machine room. The log must be completed by the qualified person performing the test.~~

~~(a) A log indicating the date of testing with all pertinent data included must be posted in the machine room. The log must be completed by the licensed elevator mechanic performing the test.~~

~~(b) It is the responsibility of the owner or the owner's representative to install an updated log sheet in the machine room; the outdated log shall remain posted in the machine room.~~))

(1) ASME A17.1-8.11.1.1.1 and ASME A17.1-8.11.1.1.2 Periodic and routine examinations and tests.

(a) Periodic tests as required in ASME A17.1-8.6 may be witnessed by an inspector employed by the authority having jurisdiction. The department authorizes mechanics licensed under this chapter to perform examinations and testing.

(b) For category 1 and 3 tests the authorized mechanic shall perform and submit a signed written report on the maintenance control log containing the code referenced devices tested and found compliant containing, but not limited to, the following information:

(i) Date of inspection;

(ii) Type of test(s) performed;

(iii) Detailed results of the test(s) including, but not limited to: Speed, governor trip speed, safety slide distance, relief valve setting, escalator/moving walk brake torque setting, etc.;

(iv) Code deficiencies noted during the test; and

(v) Statement as to any corrective action taken.

(c) For the category 5 test, the authorized mechanic shall complete a signed written report provided by the department containing, but not limited to, the information in (b)(i) through (v) and leave the report in a conspicuous location with the MCP logs.

The authorized mechanic shall sign on the space provided on the maintenance control log the code referenced devices tested and found compliant with the information addressed in (b)(i) through (v).

(2) ASME A17.1-8.11.1.3 Periodic and routine examination frequency. The frequency of periodic examinations shall be established by the authority having jurisdiction. Intervals for periodic and routine examinations in ASME A17.1-8.11:

(a) A minimum of once per year and more often as age, usage, environmental condition, and design quality dictate; and

(b) A conveyance periodic examination is considered out of compliance if more than thirty days past the interval. Inspectors will make a report to owners of noncompliance.

((~~(2)~~)) (3) Required for firefighters' service portion of the log. It is the owner's responsibility to test firefighters' service operation of Phase I and Phase II key switches quarterly and annually perform the smoke detector test.

Note: The fire service key switch(es) and smoke detector testing may be performed and logged by the building owner.

((~~(3)~~)) (4) For five-year and category 5 testing:

(a) A full-load safety test must be performed with weights on all conveyances ((~~except hydraulic elevators~~)).

(b) For roped hydraulic elevators a static load test with the full load on the car must also be performed.

(c) For tests administered under this subsection: ((~~(i)~~)) A safety tag with the date and company conducting the test must be permanently attached to the ((~~governor, safeties, and the rupture valves with a wire and seal~~)) controller.

(((~~A~~))) (i) For vertical platform lifts and stair chairs the tag must be located at the disconnecting means.

(((~~B~~))) (ii) Separate safety tags must be used to distinguish the no-load annual safety test and the five-year full load test.

(((~~ii~~))) (5) Documentation must be ((~~submitted to the department~~)) retained in the machine room for the inspectors review and supplied on the form approved ((~~state form~~)) by the department.

(((~~d~~))) (6) Qualified ((~~people~~)) personnel will conduct the test. A qualified person is either:

(((~~i~~))) (a) An elevator mechanic licensed in the appropriate category for the conveyance being tested;

(((~~ii~~))) (b) The representative of a firm that manufactured the particular conveyance, and who holds a current temporary mechanic's license in this state; or

(((~~iii~~))) (c) The representative of a firm that manufactured the particular conveyance who is working under the direct supervision of an elevator mechanic licensed in the appropriate category for the conveyance being tested.

(7) Escalators shall be tested according to ASME A17.1 adopted and this chapter and completely cleaned annually. Upon completion of this work, the appropriate form indicating that the work ((~~was done~~)), including the skirt step index graph, has been completed and is in compliance. The documents must be ((~~submitted to~~)) left with the maintenance logs for the department inspector's review.

((~~(4)~~)) (8) All other conveyances requiring annual testing must have tags indicating the date and the name of the company and person who performed the test. When the required location for mounting the tag is not readily accessible, the tag may be mounted on the main line disconnect.

NEW SECTION

WAC 296-96-23621 ASME A17.1-8.7.1.7 Repairs and replacement. Repairs and replacements shall conform to ASME A17.1-8.6.2 and ASME A17.1-8.6.3. Repairs and replacements carried out as part of an alteration shall conform to the applicable ASME A17.1 or other adopted standards and requirements of this chapter.

NEW SECTION

WAC 296-96-23701 Periodic examinations and safety tests. (1) For five year and category 5 testing, in accordance with WAC 296-96-23610(4), a full-load safety test must be performed with weights on all accessibility equipment.

(2) ASME A18.1-10.1.2 The owner must ensure that the accessibility lifts are routinely examined and tested according to section 10.2 and periodically tested to 10.3. All conveyances must be tested to the applicable code(s) by an elevator mechanic licensed in the appropriate category for the lift being tested. An inspector employed by the department may witness the examinations or test.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-23710 What requirements apply to lifts for the physically handicapped? On installations prior to 7/1/2004: Inclined and vertical chairlifts and inclined and vertical wheelchair lifts installed only for use by persons with disabilities in locations other than in or at a private residence must be equipped with a standard electric switch Chicago lock with key #2252. Owners are responsible for properly securing their lift during hours of nonuse.

EXCEPTION: See WAC 296-96-02370 for key alterations. If code clearances meant for wing walls are installed, the #2252 key requirement is not in effect (see ASME A18.1).

This requirement is in addition to ASME A18.1, and the current Washington state rules and regulations on barrier-free design located in ANSI A117.1 in effect via the State Building Code (IBC).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-96-02565 What are the requirements for top of car lighting for freight and passenger elevators?

WSR 13-18-081
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed September 4, 2013, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-040.

Title of Rule and Other Identifying Information: Chapter 246-650 WAC, Newborn screening, the Washington state board of health (SBOH) is proposing to add severe combined immunodeficiency (SCID) to the list of mandatory conditions for newborn screening conducted by the department of health (DOH).

Hearing Location(s): Washington State Capitol Campus, John A. Cherberg Building, Senate Hearing Room 3, Olympia, Washington, on October 9, 2013, at 1:30 p.m.

Date of Intended Adoption: October 9, 2013.

Submit Written Comments to: Michael Glass, 1610 N.E. 150th Street, Shoreline, WA 98155, e-mail http://www3.doh.wa.gov/policyreview/, fax (206) 418-5470, by September 29, 2013.

Assistance for Persons with Disabilities: Contact Desiree Robinson by September 25, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend WAC 246-650-010, 246-650-020, and 246-650-030 to add SCID to the panel of disorders that every newborn must be tested for unless the parents or guardian object on the grounds that such tests conflict with their religious tenets and practices. Other housekeeping changes are also proposed.

Reasons Supporting Proposal: SCID is a disabling and deadly disease that, if detected through newborn screening, infants can receive bone marrow transplants or gene therapy before damage is caused by the disorder and the infant can be cured of the condition. The United States Department of Health and Human Services recommends SCID be included in all state's newborn screening programs. Careful review by a newborn screening advisory committee concluded that SCID meets all of the SBOH's criteria for inclusion on the screening panel. The board has reviewed and accepted the committee's recommendation.

Statutory Authority for Adoption: RCW 70.83.050.

Statute Being Implemented: RCW 70.83.020.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Both SBOH and DOH are in agreement with the intent and the language of the proposed changes to chapter 246-650 WAC.

Name of Proponent: SBOH and DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Michael Glass, 1610 N.E. 150th Street, Shoreline, WA 98155, (206) 418-5470.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Michael Glass, 1610 N.E. 150th Street, Shoreline, WA 98155, phone (206) 418-5470, fax (206) 418-5415, e-mail mike.glass@doh.wa.gov.

September 4, 2013
Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 08-13-073, filed 6/16/08, effective 7/17/08)

WAC 246-650-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

For the purposes of this chapter:

(1) "Amino acid disorders" means disorders of metabolism characterized by the body's inability to correctly process amino acids or the inability to detoxify the ammonia released during the breakdown of amino acids. The accumulation of amino acids or their by-products may cause severe complications including mental retardation, coma, seizures, and possibly death. For the purpose of this chapter amino acid disorders include: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria (HCY), maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR I).

(2) "Board" means the Washington state board of health.

(3) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

(4) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

(5) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

(6) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals

suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

(7) "Department" means the Washington state department of health.

(8) "Fatty acid oxidation disorders" means disorders of metabolism characterized by the inability to efficiently use fat to make energy. When the body needs extra energy, such as during prolonged fasting or acute illness, these disorders can lead to hypoglycemia and metabolic crises resulting in serious damage affecting the brain, liver, heart, eyes, muscle, and possibly death. For the purpose of this chapter fatty acid oxidation disorders include: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium-chain acyl-CoA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

(9) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-PO_4 in the blood. If undetected and untreated, accumulated galactose-1-PO_4 may cause significant tissue and organ damage often leading to sepsis and death.

(10) "((~~Hemoglobinopathy~~)) Hemoglobinopathies" means a group of hereditary blood disorders caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

(11) "Organic acid disorders" means disorders of metabolism characterized by the accumulation of nonamino organic acids and toxic intermediates. This may lead to metabolic crisis with ketoacidosis, hyperammonemia and hypoglycemia resulting in severe neurological and physical damage and possibly death. For the purpose of this chapter organic acid disorders include: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), and propionic acidemia (PROP).

(12) "Newborn" means an infant born in a hospital in the state of Washington prior to discharge from the hospital of birth or transfer.

(13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "Health care information" as defined by the Uniform Health Care Information Act, RCW 70.02.010((~~(6)~~)) (7).

(14) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

(15) "Severe combined immunodeficiency (SCID)" means a group of congenital disorders characterized by profound deficiencies in T- and B- lymphocyte function. This results in very low or absent production of the body's primary infection fighting processes that, if left untreated, results in severe recurrent, and often life-threatening infections within the first year of life.

AMENDATORY SECTION (Amending WSR 08-13-073, filed 6/16/08, effective 7/17/08)

WAC 246-650-020 Performance of screening tests. (1) Hospitals providing birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders((~~,~~));

(ii) Disorders of concern as listed in WAC 246-650-020(2)((~~,~~));

(iii) The requirement for newborn screening((~~, and~~));

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020((~~,~~)); and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn prior to discharge from the hospital or, if not yet discharged, no later than five days of age.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory no later than the day after collection or refusal signature.

(2) Upon receipt of specimens, the department shall:

(a) Perform appropriate screening tests for:

(i) Biotinidase deficiency;

(ii) Congenital hypothyroidism;

(iii) Congenital adrenal hyperplasia;

(iv) Galactosemia;

(v) ((~~Homocystinuria;~~

~~(vi)~~)) Hemoglobinopathies;

(((~~vii) Maple syrup urine disease (MSDU);~~

~~(viii) Medium chain acyl-coA dehydrogenase deficiency (MCADD);~~

~~(ix) Phenylketonuria (PKU);~~

~~(x)~~)) (vi) Cystic fibrosis;

(((~~(xi)~~))) (vii) The amino acid disorders: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria, maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR 1) ((~~according to the schedule in WAC 246-650-030~~));

(((~~(xii)~~))) (viii) The fatty acid oxidation disorders: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium chain acyl-coA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD) according to the schedule in WAC 246-650-030;

(((~~(xiii)~~))) (ix) The organic acid disorders: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), propionic acidemia (PROP) according to the schedule in WAC 246-650-030;

(x) Severe combined immunodeficiency (SCID);

(b) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

(c) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

AMENDATORY SECTION (Amending WSR 08-13-073, filed 6/16/08, effective 7/17/08)

WAC 246-650-030 Implementation of screening to detect ((~~amino acid disorders, fatty acid oxidation disorders and organic acid disorders~~)) severe combined immunodeficiency (SCID). The department shall implement screening to detect ((~~the amino acid disorders, fatty acid oxidation disorders, and organic acid disorders listed in WAC 246-650-020 (2)(a)(xi), (xii) and (xiii)~~)) SCID as quickly as feasible ((~~and not later than September 2008~~)).

WSR 13-18-082
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Psychology)
[Filed September 4, 2013, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-137.

Title of Rule and Other Identifying Information: WAC 246-924-230 amending the continuing education requirements for psychologists; amending WAC 246-924-240 the definitions of categories of credible CE; and creating new WAC 246-924-255 for suicide training standards.

Hearing Location(s): Department of Health, Creekside Two at CenterPoint, Suite 307, 20425 72nd Avenue South, Kent, WA 98032, on November 15, 2013, at 10:00 a.m.

Date of Intended Adoption: November 15, 2013.

Submit Written Comments to: Betty J. Moe, Department of Health, 111 Israel Road S.E., P.O. Box 47852, Olympia, WA 98504, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by November 6, 2013.

Assistance for Persons with Disabilities: Contact Betty Moe by November 8, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement ESHB 2366 (chapter 181, Laws of 2012), and SHB 1376 (chapter 78, Laws of 2013), which was codified as RCW 43.70.422, by creating new continuing education (CE) requirement[s] for psychologists. The proposed rules establish CE requirements in suicide assessment, treatment and management, and provide clarification related to the topics that must be in an approved course.

Reasons Supporting Proposal: It is the legislative intent that these rules will help lower the suicide rate in Washington by requiring psychologists to complete training in suicide assessment, treatment, and management as part of their continuing education, continuing competency, or recertification requirements.

Statutory Authority for Adoption: RCW 43.70.442(7), 18.83.090.

Statute Being Implemented: RCW 43.70.442.

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

Name of Proponent: Board of psychology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Betty Moe, Program Manager, 101 Israel Road, Tumwater, WA 98501, (360) 236-4912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty J. Moe, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4912, fax (360) 236-2901, e-mail Betty.Moe@doh.wa.gov.

September 4, 2013
Thomas Wall, Ph.D., Chair
Examining Board of Psychology

AMENDATORY SECTION (Amending WSR 99-14-075, filed 7/6/99, effective 8/6/99)

WAC 246-924-230 Continuing education requirements. (1) ((~~The Washington state board of psychology (hereafter referred to as the board) requires~~)) To renew a license, a licensed psychologist must complete a minimum of sixty hours of continuing education (((~~(hereafter referred to as)~~)) (CE) every three years((~~,~~)):

(((~~(2)~~))) (a) A minimum of four hours ((~~credit in ethics~~)) must be ((~~included in the sixty hours required~~)) in ethics. Areas to be covered, depending on the licensee's primary area(s) of function are practice, consultation, research, teaching, ((~~and/~~))or supervision.

(b) Beginning January 1, 2014, once every six years, a minimum of six hours must be training covering suicide assessment, treatment, and management as specified in WAC 246-924-255. These hours count toward the total sixty hours of continuing education.

(i) Except as provided in (b)(ii)(A) and (B) of this subsection, the training must be completed during the first full CE reporting period after January 1, 2014, or the first full continuing education period after initial licensure, whichever occurs later.

(ii) A psychologist applying for initial licensure on or after January 1, 2014, may delay completion of the first training for six years after initial licensure, if he or she can demonstrate successful completion of six-hour training in suicide assessment, treatment, and management that:

(A) Was completed no more than six years prior to the application for initial licensure; and

(B) Meets the qualifications listed in WAC 246-924-255(1).

(((~~(3)~~))) (2) Faculty providing CE offerings shall meet the training and the full qualifications of their respective professions. All faculty shall have demonstrated an expertise in the areas in which they are instructing.

(((~~(4)~~))) (3) The Washington state examining board ((~~reserves the right to~~)) of psychology may require any licensee to submit ((~~evidence, e.g., course or program certificate of training, transcript, course or workshop brochure description, evidence of attendance, etc., in addition to the affidavit form in order~~)) documentation to demonstrate compliance with the sixty hours of CE ((~~requirement~~)).

AMENDATORY SECTION (Amending WSR 99-14-075, filed 7/6/99, effective 8/6/99)

WAC 246-924-240 Definitions of categories of creditable CE. (1) All continuing education (CE) activities ((~~shall~~)) must be directly relevant to maintaining or increasing professional or scientific competence in psychology.

(2) Courses or workshops primarily designed to increase practice income or office efficiency, ((~~while valuable to the licensee,~~)) are specifically noneligible for CE credit.

(3) Program sponsors or institutes ((~~should~~)) will not ((~~apply for, nor expect to~~)) receive((~~,~~)) prior or current board approval for CE status or category.

((~~Recognized activities shall include~~)) (4) Courses, seminars, workshops, and postdoctoral institutes offered or sponsored by the following qualify for continuing education credit for a licensed psychologist:

(((~~(1) Courses, seminars, workshops and post-doctoral institutes offered by~~)) (a) Educational institutions chartered by a state and recognized (accredited) by a regional association of schools, colleges and universities as providing graduate level course offerings. ((~~Such educational activities shall~~)) Documentation must be recorded on an official transcript or certificate of completion((~~,~~));

(((~~(2) Courses (including correspondence courses), seminars, workshops and post-doctoral institutes sponsored by~~))) (b) The American Psychological Association((~~,~~));

(c) Regional or state psychological associations or their subchapters((~~,~~));

(d) Psychology internship training centers((~~,~~));

(e) Other professionally or scientifically recognized behavioral science organizations((~~,~~)); and

(f) The Washington state examining board of psychology.

(((~~(3)~~))) (5) A licensed psychologist may earn credit toward the CE requirement ((~~may be earned~~)) through teaching an approved CE program. The CE credit earned ((~~through teaching shall~~)) may not exceed thirty hours every three years. Credit for teaching an approved CE program may be earned on the following basis:

(a) One credit hour for each sixty minutes actually spent teaching the program for the first event. Credit may be conferred for teaching similar subject matter only if the psychologist has actually spent an equal or greater amount of preparation time updating the subject matter to be taught on a later occasion.

(b) One credit hour for each sixty minutes actually spent participating in a panel presentation.

(6) A licensed psychologist may earn CE credit by attending an approved training in suicide assessment, treatment, and management.

NEW SECTION

WAC 246-924-255 Suicide training standards. (1) An approved training in suicide assessment, treatment, and management must:

(a) Be approved by the American Foundation for Suicide Prevention, the Suicide Prevention Resource Center, American Psychological Association, American Medical Association, regional or state psychological associations or their subchapters, psychology internship training centers, or an equivalent organization, educational institution or association which approves training based on observation and experiment or best available practices.

(b) Cover training in suicide assessment, including screening and referral, suicide treatment, and suicide management.

(c) Be provided by a single provider and must be at least six hours in length, which may be provided in one or more sessions.

(2) A licensed psychologist who is a state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(3) A licensed psychologist who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(4) A licensed psychologist that obtained training under subsection (2) or (3) of this section may obtain CE credit for that training subject to documentation as defined in WAC 246-924-300.

WSR 13-18-083
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed September 4, 2013, 10:44 a.m.]

The department of licensing, collection agencies program hereby withdraws proposed rule chapter 308-29 WAC filed on July 8, 2013, as part of WSR 13-15-009. This document serves as the official notification of our rule withdrawal.

Damon Monroe
Rules Coordinator

WSR 13-18-085
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed September 4, 2013, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-040.

Title of Rule and Other Identifying Information: Chapter 36-12 WAC, Professional boxing and chapter 36-14 WAC, Professional and amateur martial arts.

Hearing Location(s): Department of Licensing, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on October 8, 2013, at 1:30 p.m.

Date of Intended Adoption: October 10, 2013.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Combative Sports Program, P.O. Box 9026, Olympia, WA 98507, e-mail ndalmas@dol.wa.gov, fax (360) 664-2550, by October 1, 2013.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by October 1, 2013, TTY (360) 664-0116 or (360) 664-6443.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending professional boxing, chapter 36-12 WAC and professional and amateur martial arts, chapter 36-14 WAC for effectiveness, clarity, intent and statutory authority.

Amending WAC 36-12-011 Definitions, 36-12-020 Guidelines for boxing weight classes, weight difference and glove weight, 36-12-030 Weigh-in, 36-12-040 Ring and equipment, 36-12-050 Gloves, 36-12-070 Hand-wraps, 36-12-110 Referee's responsibilities/authority, 36-12-130 Outcome of contests, 36-12-140 Method of counting over a boxer who is down, 36-12-150 When boxer falls from or leaves the ring during a round, 36-12-170 Officials compensation fees to be paid by promoter, 36-12-195 License fees, renewals and requirements, 36-12-196 Organizations approved by the department to certify experience, skill and training of officials, 36-12-240 To prevent injury to contestants—Physical qualifications and exams, 36-12-270 Matchmakers, 36-12-280 Timekeeper, 36-12-285 Procedure in the event that a referee is incapacitated, 36-12-300 Judges, 36-12-310 Event physician, 36-12-320 Suspensions, 36-12-360 Promoters, 36-14-010 Definitions, 36-14-105 Guidelines for kickboxing, Muay Thai weight classes—Weight difference and glove weight, 36-14-106 Weighing time, 36-14-120 Officials compensation fees to be paid by promoter and 36-14-300 Requirements for ring or enclosed area; new WAC 36-14-020 Fouls, 36-14-1060 Participants, 36-14-1061 To prevent injury to contestants—Physical qualifications and exams, 36-14-1062 Managers, 36-14-1063 Seconds, 36-14-1064 Matchmakers, 36-14-1065 Timekeeper, 36-14-1066 Announcer, 36-14-1067 Procedure in the event that a referee is incapacitated, 36-14-305 Gloves, 36-14-310 Hand-wraps, 36-14-315 Officials, 36-14-320 Duties of department inspector, 36-14-325 Judges, 36-14-330 Scoring and the use of ten-point-must system, 36-14-335 Referee's responsibilities/authority, 36-14-340 Event Physician, 36-14-345 Foul procedures, 36-14-350 Time considerations for fouls, 36-14-355 Outcome of contest, 36-14-360 Suspensions and 36-14-365 Promoters; and repealing WAC 36-12-500 Amateur organization recognition.

Reasons Supporting Proposal: Stakeholders have requested an amendment to combative sports rules regarding officials' compensation that is paid by the event promoter. Additionally, the amendments are needed as the rules [that] were written over ten years ago are incomplete, inconsistent, and are at times contradictory. The proposed rule amendments are supported by industry.

Statutory Authority for Adoption: RCW 67.08.017, 43.24.023.

Statute Being Implemented: Chapter 67.08 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.32 [34.05.328].

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule revision. Washington state department of licensing is not a named agency, therefore, exempt from the provision.

September 4, 2013
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-045, filed 7/28/04, effective 8/28/04)

WAC 36-12-011 Definitions. The following definitions will be used throughout this WAC:

(1) "Purse" ((~~will be~~)) is defined as the sum of money or other compensation by way of guarantee, percentage or otherwise, paid to a boxer.

(2) "Knockdown" is defined as when a boxer is knocked to the ring canvas by fair blows, hangs helplessly on the ropes, or the ropes prevent his/her fall, or any part of the body other than the soles of the feet touches the ring canvas.

(3) The "outcome of a contest" occurs when the contest has concluded, a determination has been made described in WAC 36-12-130, and the report to the boxing registry required by the federal Boxing Safety Act of 1996 has been submitted.

(4) "Neutral corner" is defined as one of the two corners of a ring that are not assigned to a boxer for a contest.

(5) A "count" is the audible measure of time signaled by the referee ((~~to a boxer who has been knocked to the ring canvas by fair blows or to a standing boxer who, in the referee's judgment, is momentarily unable to defend him/herself~~)) to a boxer who has been knocked down.

(6) "Scorecard" is defined as the document used by judges to score a contest.

(7) "Ten-point-must system" of scoring is defined as the scoring system used by judges giving ten points to the boxer winning a round and a lesser number of points to the boxer losing a round.

(8) "Foul" is defined as an action by a boxer, identified by the referee that does not meet the definition of "boxing" as described in RCW 67.08.002. Fouls may include, but are not limited to, the following types of contact or acts:

(a) Hitting, a low blow, below the navel or behind the ear;

(b) Hitting an opponent who is knocked down;

(c) Holding an opponent with one hand and hitting with the other;

(d) Holding or deliberately maintaining a clinch;

(e) Wrestling, kicking or roughing;

(f) Pushing an opponent about the ring or into the ropes;

(g) Butting with the head, shoulder, knee, elbow;

(h) Hitting with the open glove, the butt or inside of the hand, or back of the hand, the elbow or the wrist;

(i) Purposely falling down onto the canvas of the ring without being hit or for the purpose of avoiding a blow;

(j) Striking deliberately at that part of the body over the kidneys;

(k) Using the pivot blow (pivoting while throwing a punch) or the rabbit punch (punches thrown to the back of the head and neck areas);

(l) Jabbing the eyes with the thumb of the glove;

(m) Use of abusive language;

(n) Unsportsmanlike conduct causing injury to an opponent that does not meet the definition of "boxing" in RCW 67.08.002;

(o) Hitting on the break;

(p) Intentionally spitting out the mouthpiece;

(q) Hitting on or out of the ropes;

(r) Holding rope and hitting;

(s) Biting/spitting;

(t) Not following referee's instructions;

(u) Stepping on opponent;

(v) Crouching below opponent's belt;

(w) Leaving neutral corner; and

(x) Corner second shouting.

(9) "Fair blow" is defined as ((~~an exchange of~~)) a blow((~~s~~)) delivered with the padded knuckle part of the glove to the front or sides of the head and body above the navel.

(10) "Event official" is defined as an official licensed under RCW 67.08.100 as a judge, referee, timekeeper, event physician, ((~~and/or~~)) inspector, or other officials deemed necessary, and appointed by the department to provide services at a boxing event.

(11) "Manager" is defined as a person licensed under RCW 67.08.100 who contracts with a boxer to receive compensation for service as an agent or representative.

(12) "Second" is defined as a person licensed under RCW 67.08.100 who assists a boxer during a contest.

(13) "Matchmaker" is defined as a person licensed under RCW 67.08.100 who works for a promoter to propose, select or arrange for boxers to participate in a boxing contest.

(14) "Announcer" is defined as a person licensed under RCW 67.08.100 who works for a promoter announcing information to the audience at a boxing event.

(15) "Referee" is defined as an event official and is the chief official supervising a boxing contest.

(16) "Timekeeper" is defined as an event official who keeps the official timing of a contest.

(17) "Judge" is defined as an event official who scores a boxing contest.

(18) "Inspector" is defined as the event official who reports directly to the department and provides overall management of a boxing event.

(19) "Advance notice" is defined as a list of matches for an event submitted by the promoter to the department for approval that includes the names of proposed boxers for a contest, his/her manager or managers and other information that may be required by the department.

(20) "Boxing registry" is defined as the entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers and required under the federal "Professional Boxing Safety Act of 1996."

(21) "Contest" is defined as a fight scheduled between boxers appearing at an event.

(22) "Round" is defined as a two- or three-minute time period during which boxers compete in a boxing contest.

(23) "Net gate proceeds" is defined as the total dollar amount received from the face value of all tickets sold with complimentary tickets excluded.

((~~(24) "Televised" is defined as any simultaneous or delayed visual broadcast of an event delivered through electronic means for viewing.~~

~~(25) "Recognized amateur boxing organization" means any amateur boxing organization recognized by the department who has not been exempted by statute and provides written documented proof required by WAC 36-12-500.~~))

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-020 Guidelines for boxing weight classes, weight difference and glove weight. The following guidelines shall be used for contests unless the department waives the weight difference allowance in writing.

Weight Class		Weight Difference Allowance	Glove Weight
((~~Straw weight~~)) Mini Flyweight	up to and including 105 pounds	not more than 3 lbs.	8 oz.
Light Flyweight	over 105 to 108 pounds	not more than 3 lbs.	8 oz.

Weight Class		Weight Difference Allowance	Glove Weight
Flyweight	over 108 to 112 pounds	not more than 3 lbs.	8 oz.
Super Flyweight	over 112 to 115 pounds	not more than 3 lbs.	8 oz.
Bantamweight	over 115 to 118 pounds	not more than 3 lbs.	8 oz.
Super Bantamweight	over 118 to 122 pounds	not more than ((~~5~~)) 4 lbs.	8 oz.
Featherweight	over 122 to 126 pounds	not more than ((~~5~~)) 4 lbs.	8 oz.
Super Featherweight	over 126 to 130 pounds	not more than ((~~7~~)) 4 lbs.	8 oz.
Lightweight	over 130 to 135 pounds	not more than ((~~7~~)) 5 lbs.	8 oz.
Super Lightweight	over 135 to 140 pounds	not more than ((~~9~~)) 5 lbs.	8 oz.
Welterweight	over 140 to 147 pounds	not more than ((~~9~~)) 7 lbs.	8 oz.
Super Welterweight	over 147 to 154 pounds	not more than ((~~11~~)) 7 lbs.	((~~8~~)) 10 oz.
Middleweight	over 154 to 160 pounds	not more than ((~~11~~)) 7 lbs.	10 oz.
Super Middleweight	over 160 to 168 pounds	not more than ((~~12~~)) 7 lbs.	10 oz.
Light Heavyweight	over 168 to 175 pounds	not more than ((~~12~~)) 7 lbs.	10 oz.
Cruiser weight	over 175 to ((~~195~~)) 200 pounds	not more than ((~~20~~)) 12 lbs.	10 oz.
Heavyweight	over ((~~195~~)) 200 pounds	no limit	10 oz.

When two boxers in a contest are above and below the weights described above both boxers shall wear the gloves required for the higher weight.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-030 Weigh-in. (1) Boxers shall be weighed within ((~~twenty-four~~)) thirty hours but not less than six hours prior to the scheduled event, at a time and place chosen by the promoter and approved by the department. The weigh-in shall take place in the presence of the department and the promoter or the promoter's representative.

(2) The scales used for weigh-in shall be provided by the promoter and approved by the department.

(3) The weight of each boxer shall be recorded on a form provided by the department and signed by the representative of the department.

(4) If a boxer ((~~weighs-in~~)) weighs in within ((~~twenty-four~~)) thirty hours, but not less than twelve hours prior to an event's scheduled start time, the boxer shall weigh the weight specified on the boxer/promoter contract referred to in WAC 36-12-360(7). If a boxer weighs more than the weight specified in the boxer/promoter contract, the boxer may:

(a) Lose the weight exceeded in the boxer/promoter contract ((~~at least twelve hours prior to the event's scheduled start time;~~

~~(b) Lose all but two pounds of the weight exceeded in the boxer/promoter contract at least twelve hours prior to the event's scheduled start time and lose the final two pounds at least two hours prior to the event's scheduled start time~~)) no later than two hours after the initial weigh-in;

(((~~c~~))) (b) Renegotiate the boxer/promoter contract; or

(((~~d~~))) (c) Not do (a) ((~~through (c)~~))) or (b) of this subsection and the contest will be canceled by the department.

(5) If a boxer weighs-in less than twelve hours prior to an event's scheduled start time, the boxer shall weigh the weight specified in the boxer/promoter contract referred to in WAC 36-12-360(7). If a boxer weighs more than ((~~two pounds over~~)) the weight specified in the boxer/promoter contract, the boxer may:

(a) ((~~Lose up to two pounds at least two hours prior to an event's scheduled start time;~~

~~(b)~~)) Renegotiate the boxer/promoter contract; or

(((~~c~~))) (b) Not do (a) ((~~or (b)~~))) of this subsection and the contest will be canceled by the department.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-040 Ring and equipment. (1) The promoter shall supply a ring that meets the following standards:

(a) The ring shall be not less than a sixteen-foot square or more than a twenty-four foot square measured within the ropes.

(b) The ring floor shall extend at least twenty-four inches beyond the ring ropes and shall be covered with one inch of padding. Padding must extend beyond the ring ropes and over the edge of the platform covered by canvas tightly stretched and securely attached to the ring platform. Canvas must be clean, smooth, and free of cracks and splits.

(c) The ring platform shall not be more than four feet above the floor of the building, and shall have safe steps.

(d) Ring posts shall be of metal, not more than four inches in diameter, extending to a height of fifty-eight inches above the ring floor and placed at least twenty-four inches behind the rope corners.

(e) There shall be four ring ropes not less than one inch in diameter, wrapped in soft material. The ropes shall be manila rope of standard manufacture. No wire or cable shall be used. The lower rope shall be eighteen inches above the ring floor, the second rope thirty inches above the floor, the third rope forty-two inches above the floor, and the fourth rope fifty-four inches above the floor. The lower rope shall have at least one-half inch of padding. Two vertical stays or

rope spacers shall be evenly spaced between the rope corners on all four sides of the ring.

(2) The promoter shall provide equipment for use by the seconds and boxers at ringside. Equipment shall consist of, but not be limited to, a corner stool, spit bucket, ice, towels, and any other items necessary for the health and safety of the boxers.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-050 Gloves. (1) Promoters shall supply gloves that meet the following standards:

(a) Gloves for all main events and title fights shall be new and fit the hands of the contestants.

(b) Gloves shall be whole, clean, sanitary, in good condition, and subject to inspection by the inspector. Gloves found to be unfit or ill-fitting, shall be replaced. Gloves shall not be twisted, manipulated, or altered in any manner.

(c) One set each of eight-ounce and ten-ounce gloves shall be provided to the inspector prior to the start of the first contest for use in case gloves are damaged during a contest.

(2) ((~~All boxers weighing 154 pounds or less shall wear eight-ounce gloves. All boxers weighing more than 154 pounds shall wear ten-ounce gloves.~~

~~(3) When two boxers in a contest are above and below the weights described in subsection (2) of this section, both boxers shall wear the gloves required for the higher weight.~~

~~(4)~~)) Gloves must have the distal portion of the thumb attached to the body of the glove so as to minimize the possibility of injury to an opponent's eye.

(((~~(5)~~))) (3) A glove or set of gloves shall only be used once during each boxing event.

(((~~(6)~~))) (4) In each contest, both boxers must wear gloves of the same manufacture unless it is stated in their contract both opponents agree to wear gloves of different manufacture.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-070 Hand-wraps. (1) Hand-wraps shall be applied in the dressing room. The hand-wraps for each hand shall be applied in the following manner:

(a) Hand-wraps shall be restricted to no more than twenty yards of soft gauze, not more than two inches wide. The gauze shall be held in place by no more than eight feet of adhesive tape no more than one and one-half inches wide.

(b) The adhesive tape shall not cover any part of the knuckles when the hand is clenched to make a fist.

(c) Liquids or other materials shall not be used on the tape or gauze.

(2) The referee or department designee shall inspect and sign the hand-wraps.

(3) Under no circumstances are gloves to be placed on the hands of a boxer until the approval of the inspector or department designee is received.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-110 Referee's responsibilities/authority. (1) The referee's primary responsibility shall be to maintain the safety and welfare of the boxers at all times.

(2) Before starting a contest, the referee shall determine the name of the chief seconds for each boxer. The chief second shall be responsible for the conduct of the boxer's other seconds during the contest.

(3) The referee shall call boxers and their chief seconds into the ring at the beginning of each contest for instructions.

(4) The referee shall not allow any person other than the boxers and the event physician to enter the ring during a round.

(5) The referee shall inspect the boxers' bodies and gloves to make sure ((~~that~~)) no substances have been applied to the detriment of an opponent.

(6) Referees who are event officials shall pass a physical examination by the event physician within twenty-four hours prior to an event for the purpose of determining their physical ability to referee the contest. If such examination indicates the referee is physically unable to referee the contest, such inability shall be noted on the ((~~preflight~~)) prefight physical form and immediately be reported to the inspector or department representative.

(7) The referee shall have the authority to stop a contest any time he/she thinks it is too one-sided, or if either boxer is in such condition that to continue might subject them to serious injury.

(8) The referee shall not make a disqualification decision based on one unintentional, low-blow foul. However, if two previous warnings for such fouls have resulted in point deductions, the third foul may be grounds for disqualification.

(9) The referee has authority to decide any matters that arise during a contest and are not covered by these rules.

(10) If a boxer receives an injury that the referee thinks shall incapacitate the boxer, the referee shall ask the event physician to examine the boxer. The event physician shall provide the referee with an opinion as to the seriousness of the injury and either the event physician or the referee shall stop the contest if the injury is serious. When a referee calls the event physician into the ring, the referee shall direct the timekeeper to cease keeping time while the event physician examines the boxer.

(11) The referee may penalize a boxer who fouls an opponent during a contest, by charging such boxer with the loss of points. The referee shall immediately notify the judges of the number of points to be deducted.

(12) The referee shall stop the contest if the boxer's chief second determines that a contest should be stopped, and immediately signals the referee by stepping onto the ring apron.

(13) When a boxer resumes boxing after having been knocked down or fallen or slipped to the floor, the referee shall wipe all foreign material from the boxer's gloves.

(14) The referee shall give a boxer injured by a low-blow foul up to five minutes to recover. Should the boxer be unable to continue at the end of the recovery period, the referee shall

declare that the boxer has signaled his/her desire to stop boxing as described in WAC 36-12-130 (1)(b)(iv).

(15) Prior to an event, each referee shall disclose to the department all considerations, including reimbursement for expenses that will be received from any source for participation in the event. The disclosure shall be made on a form supplied by the department.

(16) A decision rendered at the termination of any contest may be changed by the department if the department determines that one of the following occurred:

(a) There was collusion affecting the result of any contest;

(b) The compilation of the scorecard of the judges shows an error which would mean that the decision was given to the wrong contestant; or

(c) There was a violation of the laws or rules governing contests, which affected the result of any contest.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-130 Outcome of contests. (1) If a referee stops a contest, he shall render a decision regarding the outcome of the contest as follows:

(a) Win by knockout if:

(i) Boxer has been knocked down by fair blows and cannot arise before completion of the referee's count; or

(ii) Boxer has been knocked down and the referee waves off the count because of urgency to have the event physician examine the boxer.

(b) Win by technical knockout if:

(i) In the referee's judgment, boxer is outclassed or is unable to continue due to punishment received;

(ii) Boxer does not resume boxing by the end of a referee's count (excluding knockouts);

(iii) Corner man signals referee to terminate the bout; or

(iv) Boxer, after putting forth good effort, signals referee his/her desire to stop boxing.

(c) Win by technical decision if ((~~a contest is stopped after completion of four rounds due to an accidental head butt or foul~~)):

A bout is stopped after the completion of three rounds in bouts scheduled for four rounds and after four rounds in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately. At least two of the judges must have the same boxer ahead on points.

(d) No decision if:

A bout is stopped before the completion of three rounds in bouts scheduled for four rounds and before four rounds ((~~of a contest~~)) in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately; or

(e) Technical draw if:

A bout is stopped after the completion of three rounds in bouts scheduled for four rounds and after four rounds ((~~of a contest~~)) in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately and the judges are split (one voting for boxer A, one voting for boxer B, and the third judge with an even score); or

(f) No contest if:

(i) The bout is unable to continue due to events other than boxing (fire, riot, ring collapse, etc.); or

(ii) In the referee's judgment, there appears to be collusion affecting the outcome of the contest.

(g) Disqualification:

(i) If points have been deducted from a boxer's scorecard for three separate incidents as described in WAC 36-12-110(11);

(ii) If a boxer, in the referee's judgment, flagrantly fouls an opponent;

(iii) If a boxer quits after putting forth no effort, thereby fostering a sham on the public;

(iv) Second enters the ring during the progress of the bout; or

(v) Following a contest, a boxer tests positive for controlled substances per WAC 36-12-240.

(2) If a contest ends when the scheduled rounds are completed, the outcome of the contest may be as follows:

(a) Winner by unanimous decision if all three judges agree on the same winner;

(b) Winner by split decision if two judges agree on winner and the third judge votes for the other boxer;

(c) Winner by majority decision if two judges agree on winner and the third judge has the score even between the boxers;

(d) A draw if all three judges have the score even between the boxers or are split (one voting for boxer A, one voting for boxer B, and the third judge with an even score); or

(e) A majority draw if two of the judges agree that the score is even between the boxers.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-140 Method of counting over a boxer who is down. (1) The referee shall give an injured boxer a count of eight when a knockdown occurs. The referee does not have to continue to count if in the referee's opinion a boxer is unable to continue to box. The referee shall resume a count where it was left off if a boxer attempts to rise after being knocked down and goes down again immediately.

(2) When the referee determines a boxer has been knocked down, the referee shall require the boxers to cease boxing during the count. If the boxer rises prior to, or when the count is completed, the referee shall determine whether the boxer's reflexes and condition render it appropriate to continue the contest.

(3) If a boxer does not rise when the count of eight is completed, the referee shall continue the count to ten seconds.

(4) If the boxer being given a count by the referee is down on the canvas of the ring when the referee completes counting to ten seconds, the referee shall wave both arms to indicate that the boxer has been knocked out and shall stop the contest. The referee may raise the hand of the opponent indicating that the opponent has won by a knockout.

(5) The referee's counting of seconds is the official count. However, when a boxer is knocked down, the timekeeper shall assist with starting and maintaining an accurate count by striking the edge of the ring platform once each second with a hammer or other equipment or signaling method.

(6) When a boxer is knocked down, the referee shall direct the opponent to move to the farthest neutral corner of the ring. If the opponent leaves the neutral corner, the referee shall interrupt the count and will not resume the count until the opponent returns to the neutral corner.

(7) If a boxer is knocked down and the referee is still counting when three minutes of a round has elapsed, the bell shall not be sounded until the knocked down boxer rises and the referee indicates that the contest will continue. A boxer cannot be saved by the bell at the end of any round.

(8) If both boxers score simultaneous knockdowns (double knockdown), the referee shall begin a count as in any knockdown. If one contestant does not rise before the count of ten, his opponent shall be declared the winner. If both contestants rise before completion of the count, the bout may continue at the discretion of the referee. If both contestants rise but neither can continue as determined by the referee and/or event physician, the winner will be determined by the scorecards. ((~~If neither contestant rises before the count of ten, they will both lose by knockout.~~)) If both boxers remain down until the count of ten, the bout must be stopped and the decision is a technical draw.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-150 When boxer falls from or leaves the ring during a round. (1) A boxer who has been knocked through the ropes and over the edge of the ring platform shall be subject to a count of twenty. The boxer ((~~may be helped back into the ring by anyone except his/her seconds or manager~~)) must return to a standing and ready position unassisted by anyone before the count elapses. If assisted by anyone and the action does not cause an unfair advantage over the opponent, the boxer shall receive a mandatory count of eighteen. If the action causes an unfair advantage over the opponent, the boxer shall lose by disqualification. The referee is the sole authority in deciding if the boxer received assistance and whether or not there was an unfair advantage.

(2) A boxer who leaves the ring due to other than fair blows shall be subject to a count of ten only if he/she refuses to reenter the ring.

AMENDATORY SECTION (Amending WSR 02-23-062, filed 11/18/02, effective 1/1/03)

WAC 36-12-170 Officials compensation fees to be paid by promoter. (1) The following minimum fees shall be paid by the promoter of the event to the event officials ((~~for nontitle, nontelevision bouts~~)):

((~~Judge~~	~~$75.00~~
~~Timekeeper~~	~~$75.00~~
~~Referee (preliminary)~~	~~$110.00~~
~~Referee (main event)~~	~~$125.00~~
~~Physician~~	~~$250.00~~
~~Event chiropractor~~	~~$200.00~~))

Net gate	Referee (preliminary)	Referee (main event)
0 - $30,000	$160	$200
$30,000 - $75,000	$220	$275
$75,000 and above	$400	$475

(2) ((~~The following minimum fees shall be paid by the promoter of the event to event officials for nontitle, local televised bouts:~~

~~Judges~~	~~$100.00~~
~~Timekeepers~~	~~$100.00~~
~~Referee (preliminary)~~	~~$135.00~~
~~Referee (main event)~~	~~$200.00~~
~~Physician~~	~~$250.00~~
~~Event chiropractor~~	~~$200.00~~

~~(3)~~)) In the event of a ((~~local, state or regional championship, or~~)) title fight, event officials shall be paid by the promoter at the respective and prevailing scale of the sanctioning organization. The event officials pay rate shall not be lower than the ((~~televised~~)) rates established in subsection (((~~(2)~~))) (1) of this section.

Judge	Timekeeper	Physician	Chiropractor
$115	$115	$400	$200
$150	$150	$400	$200
$200	$200	$400	$200

(((~~(4) In the event of a championship, title fight, or nationally televised fight, event officials shall be paid by the promoter at the respective and prevailing scale of the sanctioning organization but shall not be lower than the rates established below:~~

~~Judges~~	~~$150.00~~
~~Timekeepers~~	~~$150.00~~
~~Referee (preliminary)~~	~~$175.00~~
~~Referee (main event)~~	~~$225.00~~
~~Physician~~	~~$250.00~~
~~Event chiropractor~~	~~$200.00~~

~~(5) In the event of a "world" title bout, event officials shall be paid by the promoter at the respective and prevailing scale of the sanctioning organization but shall not be lower than the rates established in subsection (4) of this section. If the "world" title bout is televised, an additional $200.00 fee~~

~~per official will be assessed for each judge, timekeeper and referee if the fees listed in subsection (4) of this section are used.~~

~~(6)~~)) (3) Travel mileage shall be paid to event officials at the state rate ((~~listed on schedule A, chapter 10.90.10.b of the *State Administrative and Accounting Manual*~~)) as ((~~published~~)) established by the office of financial management.

AMENDATORY SECTION (Amending WSR 10-08-037, filed 4/1/10, effective 5/2/10)

WAC 36-12-195 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	$ 65.00
Referee	-	$ 65.00
Boxer	-	$ 25.00
Matchmaker	-	$ 65.00
Second	-	$ 25.00
Inspector	-	((~~[~~))$ 65.00((~~]~~))
Judge	-	((~~[~~))$ 65.00((~~]~~))
Timekeeper	-	((~~[~~))$ 65.00((~~]~~))
Announcer	-	((~~[~~))$ 65.00((~~]~~))
Event physician	-	No charge
Event chiropractor	-	$ 65.00
Promoter	-	((~~[$ 200.00]~~)) $500.00

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (boxer and referee only).

(c) Federal identification card (boxer only).

(d) One small current photograph, not more than two years old (boxer only).

(e) Payment of license fee.

(f) Certification from an organization approved by the department under RCW 67.08.100(3) and WAC 36-12-196.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

AMENDATORY SECTION (Amending WSR 01-22-029, filed 10/29/01, effective 11/29/01)

WAC 36-12-196 Organizations approved by the department to certify experience, skill and training of officials. (1) Any organization wishing to be approved by or maintain their approval by the department to certify adequate experience, skill and training of officials, pursuant to RCW 67.08.100(3), shall submit the following information to the department annually:

((~~(1)~~)) (a) Description of training courses required;

((~~(2)~~)) (b) List of all persons seeking licensing from Washington state who have received training given by the organization within the past year;

((~~(3)~~)) (c) Dates training was given; and

((~~(4)~~)) (d) Assessment of the skill and experience of the person.

(2) Training seminars for boxing, kickboxing, and martial arts will be offered at least annually by the department. The training curriculum will provide training for the following types of licenses:

(a) Inspector;

(b) Judge;

(c) Referee;

(d) Timekeeper; or

(e) Other officials deemed necessary by the department.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-240 To prevent injury to contestants—Physical qualifications and exams. (1) A boxer applying for a license to box in this state shall meet the following standards:

(a) Be certified by a physician as described in RCW 67.08.002(11) to be physically fit to safely compete in professional boxing. The examination shall include, but not be limited to:

(i) Eyesight;

(ii) Blood pressure;

(iii) Communicable blood diseases including, but not limited to, HIV, Hepatitis B, and Hepatitis C; and

(iv) Other physical factors the department determines are necessary to show a boxer is physically fit to safely compete in professional boxing.

(b) In addition to the requirements of (a) of this subsection, if a boxer is over thirty-six years old, or has lost six consecutive fights, the physical certification in (a) of this subsection must include proof of:

(i) A complete physical exam which includes ((~~an electroencephalogram (EEG)~~)) a magnetic resonance imaging (MRI) of the brain and an electrocardiogram (EKG); and

(ii) Any other specialized medical testing that may be determined necessary by the department.

(2) The event physician shall examine boxers and referees within twenty-four hours prior to and immediately following an event ((~~to determine that they meet the standards in subsection (1)(a) of this section with the exception of the requirements of RCW 67.08.090(5) unless the department notifies the event physician that drug testing is required following an event~~)) as described under WAC 36-12-310.

(3) A boxer who tests positive for a drug prohibited by the World Anti-doping Agency on a drug test required by RCW 67.08.090(5) ((~~or in subsection (2) of this section shall~~)) may not be allowed to box in ((~~any~~)) events.

(4) When a contestant has been knocked out, none of the handlers are to touch the contestant((~~, except to remove the mouthpiece~~)) until the attending physician enters the ring and personally attends the fallen contestant, and issues such instructions as deemed necessary to the contestant's handlers.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-270 Matchmakers. (1) A matchmaker shall request approval from the department for each boxing contest for boxing events.

(2) The department may approve the contest if the following information about each boxer is similar and the department does not have ((~~undo~~)) undue concern for the safety and welfare of either boxer proposed for a contest:

(a) Boxing record;

(b) Boxing experience;

(c) Boxing skill; and

(d) Physical condition.

(3) The department shall notify the matchmaker and promoter when a boxing contest is approved by giving preliminary approval to the matchmaker and by approving the advance notice submitted by the promoter.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-280 Timekeeper. (1) The timekeeper supplies the bell and timing equipment.

(2) The bell shall be placed at the ring no higher than the level of the ring platform and be of a clear tone so that the contestants and officials may easily hear it.

(3) Equipment shall include, but is not limited to, ((~~an~~)) two accurate ((~~stopwatch~~)) stopwatches, whistle, hammer, and bell.

(4) The timekeeper shall be seated at ringside with the bell and shall indicate the beginning and ending of each round by striking the bell with a hammer.

(5) Ten seconds before the beginning of each round the timekeeper shall blow the whistle as a warning for everyone but the referee and boxers to leave the ring.

(6) ((~~Five~~)) Ten seconds before the end of each round the timekeeper shall notify the referee that the round is ending by striking a hard surface with a hammer or other similar object.

(7) When a contest terminates before the scheduled rounds are completed, the timekeeper shall inform the inspector of the exact duration of the contest.

(8) The timekeeper shall assist the referee during the knockdown count of a boxer.

(9) The timekeeper shall stop time on the referee's command of "time-out" and shall restart on the referee's command of "time-in" or "box."

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-285 Procedure in the event that a referee is incapacitated. (1) Timekeeper shall ring the bell and stop time.

(2) ((~~Boxers~~)) The inspector or department representative shall ((~~be commanded~~)) command the boxers to stop boxing and ((~~directed~~)) direct the boxers to opposite neutral corners.

(3) Physicians shall attend to the referee.

(4) If the referee cannot continue, an alternate referee shall be assigned by the inspector or department representative.

(5) Boxing and time shall resume at the referee's command of "time-in" or "box."

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-300 Judges. (1) Judges shall be provided scorecards by the inspector. Judges shall score each round of the contest using the scorecard, sign it at the conclusion of the ((~~contest~~)) round and turn it ((~~into~~)) in to the referee or designated official. The referee or designated official shall turn the scorecards in to the inspector who verifies the addition on the scorecards and gives the outcome of the contest to the announcer who announces the outcome to the audience.

(2) Judges shall score all contests using the "ten-point-must system." If a judge determines that both of the boxers are even in a round, each boxer receives ten points for the round. No fraction of points shall be given to a boxer for a round.

(3) If the outcome of an incomplete contest is determined by using the scorecards of the judges, all rounds including partially completed rounds will be scored. If no action has occurred, the round should be scored as an even round at the discretion of the judges.

(4) Judges shall only deduct points from a boxer's score when instructed by the referee. If the referee penalizes either contestant, then the appropriate points shall be deducted when the inspector calculates the final score.

(5) Prior to an event, each judge shall disclose to the department all considerations, including reimbursement for expenses, which will be received from any source for participation at an event. Disclosure shall be made on a form supplied by the department.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-310 Event physician. (1) The event physician shall examine the boxers and referees as required by RCW 67.08.090 and provide a report to the inspector or department representative in writing that discloses the results of the examinations and recommendations.

(2) Medical equipment to be utilized by an event physician for the preflight and post fight examinations of boxers and referees shall consist of, but not be limited to, a blood pressure cuff, stereoscope, ophthalmologic, penlight, reflex hammer, stethoscope, thermometer, and tongue depressor.

(3) If the event physician determines that a boxer or referee should not participate in an event due to a condition found during the preflight examination, the event physician shall recommend to the department that the boxer or referee not participate in the event.

(4) An event physician shall be at ringside during all the contests in an event and shall be prepared to provide medical assistance to a boxer if requested by the referee.

(5) The promoter shall provide the event physician with a suitable place to perform the preflight and post fight physical examinations.

(6) The event physician shall perform a post fight physical on each boxer immediately following an event and may recommend temporary suspension of the boxer's license due to injury incurred during a contest.

(7) The event physician may inspect first-aid equipment used by seconds.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-320 Suspensions. (1) A boxer whose manager has been suspended under chapter 67.08 RCW may continue boxing during the term of such suspension, signing his/her own boxer/promoter contract.

(2) Boxers scheduled for a contest shall sign a letter of agreement with the department accepting temporary suspension of their license if they receive an injury during the contest. The schedule for suspensions is:

(a) Thirty days for a technical knockout;

(b) Sixty days for a knockout;

(c) A period of time different than (a) and (b) of this subsection if serious injury or condition is detected by the event physician during the post fight physical; and

(d) A period of time or an indefinite period of time if serious injury or condition is detected by the event physician. If the suspension is for an indefinite period of time, the boxer may not box again without an examination completed by a physician who has provided written certification to the department that the medical condition no longer exists.

(3) If at any time a boxer's ability to perform is questionable, whether for reasons of health, mental condition, or no longer possessing the ability to compete or for any other reason, the department may recommend that the boxer be retired from further competition.

(4) Boxers who have been recommended for retirement have a right to a hearing under chapter 34.05 RCW, the Administrative Procedure Act.

AMENDATORY SECTION (Amending WSR 11-03-028, filed 1/11/11, effective 2/11/11)

WAC 36-12-360 Promoters. (1) Promoters shall not release the names of boxing contestants in an event to the media or otherwise publicize a contest unless a boxer/promoter contract has been signed and the contest approved by the department.

(2) Promoters shall not schedule an event intermission that exceeds twenty minutes.

(3) Promoters shall dispense drinks only in plastic or paper ((~~cups~~)) containers.

(4) ((~~Promoters shall not schedule less than twenty-six rounds of boxing without approval of the department.~~

~~(5)~~)) Advance notices for all boxing shows must be in the office of the department seven days prior to the holding of any boxing show. In addition to the regular scheduled boxers the advance notice must show the names of boxers engaged by the promoter for an emergency bout.

((~~(6)~~)) (5) Changes in announced or advertised programs for any contest must be approved prior to the contest by the department. Notice of such change or substitution must also be given to the press, conspicuously posted at the box office, and announced from the ring before the opening contest. If any ticket holders desire a refund, such refund shall be made at the box office prior to the start of the first contest.

((~~(7)~~)) (6) The promoter of an event shall contract with each boxer for a contest. Original contracts shall be filed with the department at least five days prior to the event. The contract shall be on a form supplied by the department and contain at least the following:

(a) The weight of the boxer at weigh-in;

(b) The amount of the purse to be paid for the contest;

(c) The date and location of the contest;

(d) Any other payment or consideration provided to the boxer;

(e) List of all fees, charges and expenses including training expenses that will be assessed to the boxer or deducted from the boxer's purse;

(f) Any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer; and

(g) The amount of any compensation or consideration that a promoter has contracted to receive from a match.

((~~(8)~~)) (7) If a boxer/promoter contract is renegotiated, the promoter shall provide the department with the contract at least two hours prior to an event's scheduled start time.

((~~(9)~~)) (8) If the information from the contract in subsection ((~~(7)~~)) (6)(e), (f), and (g) of this section is discloseable under Washington state public disclosure law, the promoter may instead provide the information to the Association of Boxing Commissions instead of including the information in the boxer/promoter contract.

((~~(10)~~)) (9) A promoter for an event shall not be a manager for a boxer who is contracted for ten rounds or more of boxing at that event or have direct or indirect financial interest in a boxer in the event.

((~~(11)~~)) (10) The promoter of an event shall provide payments for the boxers' purses and event official's fee in the form of checks or money orders to the department prior to an event. The department may allow other forms of payment if arranged in advance. The department shall pay the boxers and officials immediately after the event, but not later than seventy-two hours from the conclusion of the event.

((~~(12)~~)) (11) Promoters shall provide seats for event officials and department representatives at ringside for each event.

((~~(13)~~)) (12) Promoters shall provide an ambulance or paramedical unit with transport and resuscitation capabilities, with a minimum of two attendants, to be present at the event location at all times during the event.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 36-12-500 Amateur organization recognition.

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-010 Definitions. The following definition(s) will be used throughout this WAC:

((~~"Mixed martial arts" in addition to RCW 67.08.002 (20), mixed martial arts does not include muay thai and kickboxing.~~

~~(2)~~)) "Advance notice" is defined as a list of matches for an event submitted by the promoter to the department for approval that includes the names of proposed participants for a contest, his/her manager or managers and other information that may be required by the department.

"Announcer" is defined as a person licensed under RCW 67.08.100 who works for a promoter announcing information to the audience at an event.

"Contest" is defined as a fight scheduled between participants appearing at an event.

"Event official" is defined as an official licensed under RCW 67.08.100 as a judge, referee, timekeeper, event physician, inspector, or other officials deemed necessary, and appointed by the department to provide services at an event.

"Inspector" is defined as the event official who reports directly to the department and provides overall management of an event.

"Judge" is defined as an event official who scores a contest.

"Manager" is defined as a person licensed under RCW 67.08.100 who contracts with a participant to receive compensation for service as an agent or representative.

"Matchmaker" is defined as a person licensed under RCW 67.08.100 who works for a promoter to propose, select or arrange for participants to participate in an event.

"Mixed martial arts" in addition to RCW 67.08.002(20), mixed martial arts does not include muay thai and kickboxing.

"Net gate proceeds" is defined as the total dollar amount received from the face value of all tickets sold with complementary tickets excluded.

"Neutral corner" is defined as one of the corners that are not assigned to a martial arts participant for a contest.

"Outcome of a contest" occurs when the contest has concluded, a determination has been made described in WAC 36-14-355, and the report to the martial arts registry has been submitted.

"Purse" is defined as the sum of money or other compensation by way of guarantee, percentage or otherwise, paid to a participant.

"Referee" is defined as an event official and is the chief official supervising a contest.

"Round" is defined as a three- or five-minute time period during which participants compete in a contest.

"Scorecard" is defined as the document used by judges to score a contest.

"Second" is defined as a person licensed under RCW 67.08.100 who assists a participant during a contest.

"Ten-point-must system" of scoring is defined as the scoring system used by judges giving ten points to the participant winning a round and a lesser number of points to the participant losing a round.

"Timekeeper" is defined as an event official who keeps the official timing of a contest.

"Training facility" is a location licensed and defined under chapter 67.08 RCW to hold amateur mixed martial arts exhibitions in that location.

NEW SECTION

WAC 36-14-020 Fouls. The following are fouls and will result in penalties if committed:

(1) Holding or grabbing the fence;

(2) Holding opponent's shorts or gloves;

(3) Butting with the head;

(4) Eye gouging of any kind;

(5) Biting or spitting at an opponent;

(6) Hair pulling;

(7) Fish hooking;

(8) Groin attacks of any kind;

(9) Intentionally placing a finger into any orifice, or into any cut or laceration of your opponent;

(10) Downward pointing of elbow strikes;

(11) Small joint manipulation;

(12) Strikes to the spine or the back of the head;

(13) Heel kicks to the kidney;

(14) Throat strikes of any kind including, without limitation, grabbing the trachea;

(15) Clawing, pinching, twisting the flesh or grabbing the clavicle;

(16) Kicking the head of a grounded opponent;

(17) Kneeing the head of a grounded opponent;

(18) Stomping of a grounded opponent;

(19) The use of abusive language in the fighting area;

(20) Any unsportsmanlike conduct that causes an injury to an opponent;

(21) Attacking an opponent on or during the break;

(22) Attacking an opponent who is under the care of the referee;

(23) Timidity (avoiding contact, or consistently dropping the mouthpiece, or faking an injury);

(24) Interference from mixed martial artists seconds;

(25) Throwing an opponent out of the ring or caged area;

(26) Flagrant disregard of the referee's instructions;

(27) Spiking the opponent to the canvas onto the head or neck (pile driving); and

(28) Attacking an opponent after the bell has sounded the end of the period of unarmed combat.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-14-105 Guidelines for ((~~kickboxing and Muay Thai~~)) martial arts weight classes((—)) and weight difference ((~~and glove weight~~)) allowance. The following guidelines shall be used for contests unless the department waives the weight difference allowance in writing. ((~~Glove weight shall be ten ounces for all weight classes.~~

~~Weight Class~~		~~Weight Difference Allowance~~
~~Flyweight~~	~~112 pounds to no minimum~~	~~not more than 3 lbs.~~
~~Super Flyweight~~	~~112.1 to 115 pounds~~	~~not more than 3 lbs.~~
~~Bantamweight~~	~~115.1 to 118 pounds~~	~~not more than 3 lbs.~~
~~Super Bantamweight~~	~~118.1 to 122 pounds~~	~~not more than 5 lbs.~~
~~Featherweight~~	~~122.1 to 126 pounds~~	~~not more than 5 lbs.~~
~~Super Featherweight~~	~~126.1 to 130 pounds~~	~~not more than 7 lbs.~~

~~Weight Class~~		~~Weight Difference Allowance~~
~~Lightweight~~	~~130.1 to 135 pounds~~	~~not more than 7 lbs.~~
~~Super Lightweight~~	~~135.1 to 140 pounds~~	~~not more than 9 lbs.~~
~~Welterweight~~	~~140.1 to 147 pounds~~	~~not more than 9 lbs.~~
~~Super Welterweight~~	~~147.1 to 154 pounds~~	~~not more than 11 lbs.~~
~~Middleweight~~	~~154.1 to 160 pounds~~	~~not more than 11 lbs.~~
~~Super Middleweight~~	~~160.1 to 167 pounds~~	~~not more than 12 lbs.~~
~~Light Heavyweight~~	~~167.1 to 175 pounds~~	~~not more than 12 lbs.~~
~~Super Light Heavyweight~~	~~175.1 to 183 pounds~~	~~not more than 20 lbs.~~
~~Cruiserweight~~	~~183.1 to 190 pounds~~	~~not more than 20 lbs.~~
~~Heavyweight~~	~~190.1 to 220 pounds~~	~~no limit~~
~~Super Heavyweight~~	~~over 220.1 pounds~~	~~no limit~~))

Weight Class		Weight Difference Allowance
Flyweight	up to and including 125 pounds	not more than 5 lbs.
Bantamweight	over 125 to 135 pounds	not more than 10 lbs.
Featherweight	over 135 to 145 pounds	not more than 10 lbs.
Lightweight	over 145 to 155 pounds	not more than 10 lbs.
Welterweight	over 155 to 170 pounds	not more than 15 lbs.
Middleweight	over 170 to 185 pounds	not more than 15 lbs.
Light Heavyweight	over 185 to 205 pounds	not more than 20 lbs.
Heavyweight	over 205 to 265 pounds	not more than 60 lbs.
Super Heavyweight	over 265 pounds	no limit

A one pound allowance for nontitle bouts is acceptable but only if provided for in the written bout contract.

The department may approve catch weight bouts, subject to their review and discretion. For example, the department may still decide to allow the contest if it feels that the contest would still be fair, safe and competitive if a set catch weight is set in advance at 163 pounds, for example.

In addition, if one athlete weighs in at 264 pounds while the opponent weighs in at 267 pounds, the department may still decide to allow the contest if it feels that the contest would still be fair and competitive. This would be despite the fact that the two athletes weighed in at differing weight classes.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-14-106 ((~~Weighing time.~~)) Weigh-in. (1) Participants shall be weighed within ((~~twenty-four~~)) thirty hours but not less than six hours prior to the scheduled event, at a time and place chosen by the promoter and approved by the department. The weigh-in shall take place in the presence of the department and the promoter or the promoter's representative.

(2) The scales used for weigh-in shall be provided by the promoter and approved by the department.

(3) The weight of each participant shall be recorded on a form provided by the department and signed by the representative of the department.

(4) If a participant ((~~weighs-in~~)) weighs in within ((~~twenty-four~~)) thirty hours, but not less than twelve hours prior to an event's scheduled start time, the participant shall weigh the weight specified on the ((~~boxer~~)) participant/promoter contract referred to in WAC ((~~36-12-360(7)~~)) 36-14-365. If a participant weighs more than the weight specified in the ((~~boxer~~)) participant/promoter contract, the participant may:

(a) Lose the weight exceeded in the ((~~boxer~~)) participant/promoter contract ((~~at least twelve hours prior to the event's scheduled start time~~)) no later than two hours after the initial weigh-in;

(b) ((~~Lose all but two pounds of the weight exceeded in the boxer/promoter contract at least twelve hours prior to the event's scheduled start time and lose the final two pounds at least two hours prior to the event's scheduled start time;~~

~~(c)~~)) Renegotiate the ((~~boxer~~)) participant/promoter contract; or

(((~~(d)~~)) (c) Not do (a) ((~~through (c)~~)) or (b) of this subsection and the contest will be canceled by the department.

(5) If a participant ((~~weighs-in~~)) weighs in less than twelve hours prior to an event's scheduled start time, the participant shall weigh the weight specified in the ((~~boxer~~)) participant/promoter contract referred to in WAC ((~~36-12-360~~)) 36-14-365(7). If a participant weighs more than ((~~two pounds over~~)) the weight specified in the ((~~boxer~~)) participant/promoter contract, the participant may:

(a) ((~~Lose up to two pounds at least two hours prior to an event's scheduled start time;~~

~~(b)~~)) Renegotiate the ((~~boxer~~)) participant/promoter contract; or

(((~~(c)~~)) (b) Not do (a) ((~~or (b)~~)) of this subsection and the contest will be canceled by the department.

NEW SECTION

WAC 36-14-1060 Participants. (1) Participants shall be present in the dressing room at the time designated by the department or at least one hour before the scheduled time of the first contest.

(2) Participants shall compete in mixed martial arts shorts, biking shorts, or kick-boxing shorts, groin protector (males only), chest protector (females only), and a custom-made individually fitted mouthpiece. Shoes, gis, shirts, and jewelry or piercing accessories are prohibited during competition.

(3) All female participants must provide a negative pregnancy test within seven days prior to each contest.

(4) Participants shall not use substances on their body or gloves that might handicap an opponent.

(5) If a participant cannot compete in an event for which the participant has a contract with a promoter due to a physical disability, the participant shall be examined by a physi-

cian as defined in RCW 67.08.002(11) prior to the scheduled event. The participant shall report the disability to the department prior to the scheduled contest.

(6) After a participant competes in an event, the participant shall not compete again until seven days have passed.

(7) The department may limit the persons allowed in the dressing room of a participant.

(8) Licensees shall not verbally abuse or have physical contact with any event official.

(9) Copies of the annual physical examination required in RCW 67.08.100(2) shall be provided to the department. The examination shall certify that a participant is physically fit to safely compete in a martial arts contest.

(10) Any professional participant engaging in amateur events shall be subject to disciplinary action by the department.

NEW SECTION

WAC 36-14-1061 To prevent injury to contestants—Physical qualifications and exams. (1) A participant applying for a license to compete in this state shall meet the following standards:

(a) Be certified by a physician as described in RCW 67.08.002(11) to be physically fit to safely compete in professional martial arts. The examination shall include, but not be limited to:

(i) Eyesight;

(ii) Blood pressure;

(iii) Communicable blood diseases including, but not limited to, HIV, Hepatitis B, and Hepatitis C; and

(iv) Other physical factors the department determines are necessary to show a participant is physically fit to safely compete in professional martial arts.

(b) In addition to the requirements of (a) of this subsection, if a participant is over thirty-six years old, or has lost six consecutive fights, the physical certification in (a) of this subsection must include proof of:

(i) A complete physical exam which includes a magnetic resonance imaging (MRI) of the brain and an electrocardiogram (EKG); and

(ii) Any other specialized medical testing that may be determined necessary by the department.

(2) The event physician shall examine participants and referees within twenty-four hours prior to and immediately following an event as described under WAC 36-14-340.

(3) A participant who tests positive for a drug prohibited by the World Anti-doping Agency on a drug test required by RCW 67.08.090(5) may not be allowed to compete in events.

(4) When a participant has been knocked out, none of the handlers are to touch the participant until the attending physician enters the ring and personally attends the fallen participant and issues such instructions as deemed necessary to the participant's handlers.

NEW SECTION

WAC 36-14-1062 Managers. (1) Participants are not required to have a manager.

(2) Managers may serve as seconds for their contracted participants without holding a second's license.

(3) When a participant has a manager, there shall be a contract for services as an agent or representative. Contracts need not be filed with the department, but shall be provided upon request.

NEW SECTION

WAC 36-14-1063 Seconds. (1) During a contest a second may:

(a) Coach at ringside or in the ring or cage during the break between rounds;

(b) Stop bleeding from cuts;

(c) Reduce swelling;

(d) Provide water or other cooling-down techniques.

(2) No more than four seconds can assist each participant during a contest.

(3) Seconds shall remain seated during rounds and shall not excessively coach a participant during rounds.

(4) Before a contest begins, a chief second for each participant shall be identified for the inspector and the referee.

(5) Seconds shall not enter a ring or cage until the sounding device indicates the end of a round. Seconds shall leave the ring or cage at the sound of the timekeeper's sounding device that is given ten seconds before a round begins. Seconds shall remove all items in the ring or cage and on the ring platform prior to the sound indicating the beginning of a round.

(6) The chief second shall signal the referee to stop the fight by mounting the ring or cage platform or stairs during a round.

NEW SECTION

WAC 36-14-1064 Matchmakers. (1) A matchmaker shall request approval from the department for each contest for martial arts events.

(2) The department may approve the contest if the following information about each participant is similar and the department does not have undue concern for the safety and welfare of either participants proposed for a contest:

(a) Participants record;

(b) Participants experience;

(c) Participants skill; and

(d) Physical condition.

(3) The department shall notify the matchmaker and promoter when a contest is approved by giving preliminary approval to the matchmaker and by approving the advance notice submitted by the promoter.

NEW SECTION

WAC 36-14-1065 Timekeeper. (1) The timekeeper supplies the sounding devices and timing equipment.

(2) The sounding device shall be placed at the ring no higher than the level of the ring or cage platform and be of a clear tone so that the contestants and officials may easily hear it.

(3) Equipment shall include, but is not limited to, two accurate stopwatches, whistle, hammer or clapper, and bell or horn.

(4) The timekeeper shall be seated at ringside or cageside with the sounding devices and shall indicate the beginning and ending of each round by sounding the device.

(5) Ten seconds before the beginning of each round the timekeeper shall blow the whistle as a warning for everyone but the referee and participant to leave the ring.

(6) Ten seconds before the end of each round the timekeeper shall notify the referee that the round is ending by striking a hard surface with a hammer or other similar object.

(7) When a contest terminates before the scheduled rounds are completed, the timekeeper shall inform the inspector of the exact duration of the contest.

(8) The timekeeper shall stop time on the referee's command of "time-out" and shall restart on the referee's command of "time-in" or "fight."

NEW SECTION

WAC 36-14-1066 Announcer. (1) At the beginning of a contest, when the participants and their chief seconds are in the ring, the announcer shall announce to the audience the names of the participants, their weight, and other pertinent information.

(2) At the conclusion of a contest, the announcer shall announce the outcome of the contest.

(3) Prior to the first contest, the announcer shall announce any substitutions of participants or changes in an event schedule.

NEW SECTION

WAC 36-14-1067 Procedure in the event that a referee is incapacitated. (1) Timekeeper shall sound the device and stop time.

(2) The inspector or department representative shall command the participants to stop and direct the participants to opposite neutral corners.

(3) Physicians shall attend to the referee.

(4) If the referee cannot continue, an alternate referee shall be assigned by the inspector or department representative.

(5) The contest and time shall resume at the referee's command.

Net gate	Referee (preliminary)	Referee (main event)
0 - $30,000	$160	$200
$30,000 - $75,000	$220	$275
$75,000 and above	$400	$475

(2) ((~~The following minimum fees shall be paid by the promoter of the event to event officials for nontitle, televised bouts:~~

~~Judges~~	~~$100.00~~
~~Timekeepers~~	~~$100.00~~
~~Referee (preliminary)~~	~~$135.00~~
~~Referee (main event)~~	~~$200.00~~

NEW SECTION

WAC 36-14-109 Organizations approved by the department to certify experience, skill and training of officials. (1) Any organization wishing to be approved by or maintain their approval by the department to certify adequate experience, skill and training of officials, pursuant to RCW 67.08.100(3), shall submit the following information to the department annually:

(a) Description of training courses required;

(b) List of all persons seeking licensing from Washington state who have received training given by the organization within the past year;

(c) Dates training was given; and

(d) Assessment of the skill and experience of the person.

(2) Training seminars for boxing, kickboxing, and martial arts will be offered at least annually by the department. The training curriculum will provide training for the following types of licenses:

(a) Inspector;

(b) Judge;

(c) Referee;

(d) Timekeeper; or

(e) Other officials deemed necessary by the department.

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-120 Officials compensation fees to be paid by promoter. (1) The following minimum fees shall be paid by the promoter of the event to the event officials ((~~for nontitle, nontelevision bouts~~)):

((~~Judge~~	~~$75.00~~
~~Timekeeper~~	~~$75.00~~
~~Referee (preliminary)~~	~~$110.00~~
~~Referee (main event)~~	~~$125.00~~
~~Physician~~	~~$250.00~~
~~Event chiropractor~~	~~$200.00~~))

Judge	Timekeeper	Physician	Chiropractor
$115	$115	$400	$200
$150	$150	$400	$200
$200	$200	$400	$200

~~Physician~~	~~$250.00~~
~~Event chiropractor~~	~~$200.00~~

~~(3)~~)) In the event of a ((~~local, state or regional championship,~~)) title fight, ((~~or local televised fight,~~)) event officials shall be paid by the promoter at the respective and prevailing scale of the professional sanctioning organization. The event officials pay rate shall not be lower than the ((~~televised~~)) rates established in subsection (((~~(2)~~))) (1) of this section.

(((~~(4) In the event of a championship, title fight, or nationally televised fight, event officials shall be paid by the promoter at the respective and prevailing scale of the professional sanctioning organization but shall not be lower than the rates established below:~~

~~Judges~~	~~$150.00~~
~~Timekeepers~~	~~$150.00~~
~~Referee (preliminary)~~	~~$175.00~~
~~Referee (main event)~~	~~$225.00~~
~~Physician~~	~~$250.00~~
~~Event chiropractor~~	~~$200.00~~

~~(5) In the event of a "world" title bout, event officials shall be paid by the promoter at the respective and prevailing scale of the professional sanctioning organization but shall not be lower than the rates established in subsection (4) of this section. If the "world" title bout is televised, an additional $200.00 fee per official will be assessed for each judge, timekeeper and referee if the fees listed in subsection (4) of this section are used.~~

~~(6)~~)) (3) Travel mileage shall be paid to event officials at the state rate ((~~listed on schedule A, chapter 10.90.10.b of the *State Administrative and Accounting Manual* as published~~)) as established by the office of financial management.

(((~~(7)~~)) (4) Amateur mixed martial arts sanctioning organizations and training facilities may set their own compensation fees for officials.

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-300 Requirements for ring ((~~or enclosed area~~)), cage, and equipment. (1) Mixed martial arts and martial arts contests and exhibitions shall be held in a ring or ((~~in an enclosed area~~)) cage.

(2) A ring used for a contest or exhibition of ((~~mixed~~)) martial arts must meet the following requirements:

(a) The ring must be no smaller than ((~~sixteen~~)) twenty feet square and no larger than thirty-two feet square within the ropes((~~.~~));

(b) One of the corners must have a blue designation and the corner directly across must have a red designation;

(c) The ring floor must extend at least ((~~twenty-four~~)) eighteen inches beyond the ropes. The ring floor must be padded with ensolite or another similar closed-cell foam, with at least a one-inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps and ridges may not be used. The top covering must be clean, smooth, and free of cracks and splits;

(((~~(c)~~)) (d) The ring platform ((~~must~~)) shall not be more than four feet above the floor of the building and ((~~must have suitable steps for the use of the participants.~~)) shall have safe steps;

(((~~(d)~~)) (e) Ring posts must be made of metal, not more than ((~~three~~)) four inches in diameter, extending from the floor of the building to a minimum height of fifty-eight inches above the ring floor, and must be properly padded in a manner approved by the department. Ring posts must be at least twenty-four inches away from the ring ropes((~~.~~));

(((~~(e)~~)) (f) There may be ((~~no more than~~)) five ring ropes, not less than one inch in diameter and wrapped in soft material. The lowest ring rope must be ((~~at least~~)) no higher than twelve inches above the ring floor((~~.~~));

(((~~(f)~~)) (g) There must not be any obstruction or object on any part of the ring floor.

(3) ((~~An enclosed area~~)) A cage used in a contest or exhibition of ((~~mixed~~)) martial arts must meet the following requirements:

(a) ((~~The enclosed area must be circular or have at least four equal sides and must be no smaller than twenty feet wide.~~

~~(b) The floor of the enclosed area must be padded with ensolite or another similar closed-cell foam, with at least a one-inch layer of foam padding, with a top covering of canvas, duck or similar material tightly stretched and laced to the platform of the enclosed area.~~

~~(c) The platform of the enclosed area must not be more than four feet above the floor of the building and must have suitable steps for the use of the participants.~~

~~(d) Enclosure posts must be made of metal, not more than six inches in diameter, extending from the floor of the building to between five and seven feet above the floor of the enclosed area, and must be properly padded in a manner approved by the department.~~

~~(e) The material used to construct the enclosed area must be made of a material that will prevent an unarmed combatant from falling out of the enclosed area or breaking through the enclosed area onto the floor of the building or onto the spectators, including, without limitation, chain link fence coated with vinyl.~~

~~(f) Any metal material used in the enclosed area must be covered and padded in a manner approved by the department and must not be abrasive to the participants.~~

~~(g) The enclosed area must have at least three entrances.~~)) The fighting area canvas shall be no smaller than eighteen feet by eighteen feet and no larger than thirty-two feet by thirty-two feet. The fighting area canvas shall be padded in a manner as approved by the department, with at least one inch layer of foam padding.

(b) Padding shall extend beyond the fighting area and over the edge of the platform. No vinyl or other plastic rubberized covering shall be permitted.

(c) The fighting area canvas shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants.

(d) The fighting area canvas shall be enclosed by a fence made of such material as will not allow a participant to fall out or break through it onto the floor or spectators including, but not limited to, vinyl coated chain link fencing.

(e) All metal parts shall be covered and padded in a manner approved by the department and shall not be abrasive to the contestants.

(f) The fence shall provide two separate entries onto the fighting area canvas.

(g) Posts shall be made of metal not more than six inches in diameter, extending from the floor of the building to a min-

imum height of fifty-eight inches above the fighting area canvas and shall be properly padded in a manner approved by the department.

(h) There must not be any obstruction on any part of the enclosure surrounding the area in which the participants are to be competing.

(4) The promoter shall provide equipment for use by the seconds and participants at cage or ringside. Equipment shall consist of, but not be limited to, a corner stool, spit bucket, ice, towels, and any other items necessary for the health and safety of the participants.

NEW SECTION

WAC 36-14-305 Gloves. (1) All contestants shall wear gloves which are at least four ounces and are approved by the department. Generally, gloves should not weigh more than six ounces without the approval of the department. Certain larger sized gloves, e.g., 2 XL - 4 XL, may be allowed even though they may slightly exceed six ounces.

(2) Promoters shall supply gloves that meet the following standards:

(a) Gloves for all main events and title fights shall be new and fit the hands of the contestants.

(b) Gloves shall be whole, clean, sanitary, in good condition, and subject to inspection by the inspector. Gloves found to be unfit or ill-fitting shall be replaced. Gloves shall not be twisted, manipulated, or altered in any manner.

(c) One set of gloves in each size being used during an event shall be provided to the inspector prior to the start of the first contest for use in case gloves are damaged during a contest.

(3) A glove or set of gloves shall only be used once during each event.

(4) In each contest, both participants must wear gloves of the same manufacture unless it is stated in their contract both opponents agree to wear gloves of different manufacture.

NEW SECTION

WAC 36-14-310 Hand-wraps. (1) All participants shall be required to gauze and tape their hands prior to all contests. In all weight classes, the bandages on each contestant's hand shall be restricted to soft gauze cloth not more than fifteen yards in length and two inches in width, held in place by not more than ten feet of surgeon's tape, one inch in width, for each hand. Surgeon's adhesive tape shall be placed directly on each hand for protection near the wrist. However, as opposed to boxing wraps, the tape may cross the back of the hand twice and extend to cover and protect the knuckles, but not over the knuckles, when the hand is clenched to make a fist. The bandages shall be evenly distributed across the hand. Bandages and tape shall be placed on the contestant's hands in the dressing room in the presence of the inspector or assigned designee and, if warranted, in the presence of the manager or chief second of his/her opponent.

(2) Under no circumstances are gloves to be placed on the hands of a participant until the approval of the inspector or department designee is received.

(3) Substances other than tape and gauze shall not be utilized. For example, prewraps shall not be used.

(4) Liquids or other materials shall not be used on the tape or gauze.

(5) The referee or department designee shall inspect and sign the hand-wraps.

(6) The referee or department designee shall inspect and sign off on the gloves after wraps.

NEW SECTION

WAC 36-14-315 Officials. (1) The department shall appoint at least two referees, a timekeeper, two event physicians, three judges, and an inspector for each event. Additional event officials may be appointed by the department.

(2) In order to ensure the health and safety of the contestants and officials, licensed event officials not appointed to work at an event shall be admitted to an event without charge by the promoter. These officials shall report to the department immediately upon arriving at the event for appointment as back-up to appointed event officials or for other duties.

(3) Event officials shall dress in appropriate attire.

(a) Judges and inspectors should dress in casual business attire (sport coat and dress slacks) to assure a professional appearance. At a minimum, the recommended attire will be dress sport shirt and slacks.

(b) The uniform for referees should consist of:

(i) Black or dark blue trousers;

(ii) Black shoes (boxing shoes or approved soft-soled shoes); and

(iii) Black polo shirt.

(c) Timekeepers should dress in a black and white striped shirt and dress slacks.

NEW SECTION

WAC 36-14-320 Duties of department inspector. (1) The inspector appointed by the department for each event reports directly to the department, and may be a department representative. The inspector shall be responsible for at least the following:

(a) Completion of the event report;

(b) Details of the contest that are not under the jurisdiction of other event officials;

(c) Determining that necessary equipment is provided by the promoter to the participants, event officials and department officials;

(d) Instructing the seconds in their duties;

(e) Delivering the event physician's prefight and postfight physical reports to the department;

(f) Delivering the statement of weights to the department;

(g) Working with all officials and licensees to assure that all regulations pertaining to the proper conduct of the contest are enforced; and

(h) Inspection of the ring and facilities.

(2) The inspector shall be paid a fee by the promoter, which is two percent of the net gate proceeds of the contest. The fee shall not be less than fifty dollars nor more than one hundred fifty dollars for a closed circuit contest and not less than one hundred dollars nor more than five hundred dollars for all other contests.

(3) Event report forms shall be supplied to the inspector by the department for each event.

(4) The event report shall be completed by the inspector for each event and signed by the event officials.

(5) The inspector report shall contain at least the following information:

(a) Recommendations from event physicians regarding suspensions;

(b) Information regarding possible violations of the law or rules;

(c) Circumstances under which a contest is stopped;

(d) Reason for awarding a decision;

(e) Ending time of match;

(f) Reason for deducting points;

(g) Recommendations for holding the purse or portion of the purse of a participant;

(h) Name of participants;

(i) Number of rounds; and

(j) Weigh-in weight of participants.

NEW SECTION

WAC 36-14-325 Judges. (1) Judges shall be provided scorecards by the inspector. Judges shall score each round of the contest using the scorecard, sign it at the conclusion of the round and turn it in to the referee or designated official. The referee or designated official shall turn the scorecards in to the inspector who verifies the addition on the scorecards and gives the outcome of the contest to the announcer who announces the outcome to the audience.

(2) Judges shall score all contests using the "ten-point-must system." If a judge determines that both of the participants are even in a round, each participant receives ten points for the round. No fraction of points shall be given to a participant for a round.

(3) If the outcome of an incomplete contest is determined by using the scorecards of the judges, all rounds including partially completed rounds will be scored. If no action has occurred, the round should be scored as an even round at the discretion of the judges.

(4) Judges shall only deduct points from a participant's score when instructed by the referee. If the referee penalizes either contestant, then the appropriate points shall be deducted when the inspector calculates the final score.

(5) Prior to an event, each judge shall disclose to the department all considerations, including reimbursement for expenses, which will be received from any source for participation at an event. Disclosure shall be made on a form supplied by the department.

NEW SECTION

WAC 36-14-330 Scoring and the use of ten-point-must system. (1) All bouts will be evaluated and scored by three judges. The ten-point-must system will be the standard system of scoring a bout. Under the ten-point-must scoring system, ten points must be awarded to the winner of the round and nine points or less must be awarded to the loser, except for an even round, which is scored 10-10.

(2) Judges shall evaluate mixed martial arts techniques, such as effective striking, effective grappling, control of the fighting area, effective aggressiveness, and defense. Evaluations shall be made in the order in which the techniques appear, giving the most weight in scoring to effective striking, effective grappling, control of the fighting area and effective aggressiveness, and defense. Effective striking is judged by determining the number of legal strikes landed by a contestant and the significance of such legal strikes.

(3) Effective grappling is judged by considering the amount of successful executions of a legal takedown and reversals. Examples of factors to consider are takedowns from standing position to mount position, passing the guard to mount position, and bottom position using an active, threatening guard.

(4) Fighting area control is judged by determining who is dictating the pace, location and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking; taking down an opponent to force a ground fight; creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.

(5) Effective aggressiveness means moving forward and landing a legal strike or takedown.

(6) Effective defense means avoiding being struck, taken down or reversed while countering with offensive attacks.

(7) The following objective scoring criteria shall be utilized by the judges when scoring a round:

(a) A round is to be scored as a 10-10 round when both contestants appear to be fighting evenly and neither contestant shows dominance in a round;

(b) A round is to be scored as a 10-9 round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling, and other maneuvers;

(c) A round is to be scored as a 10-8 round when a contestant overwhelmingly dominates by striking or grappling in a round;

(d) A round is to be scored as a 10-7 round when a contestant totally dominates by striking or grappling in a round.

(8) There should be scoring of an incomplete round. If the referee penalizes either contestant, then the appropriate points shall be deducted when the inspector calculates the final score for the partial round.

(9) Fouls may result in a point being deducted by the inspector from the offending participant's score. The inspector, not the judges, will be responsible for calculating the true score after factoring in the point deduction.

(10) Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.

NEW SECTION

WAC 36-14-335 Referee's responsibilities/authority. (1) The referee's primary responsibility shall be to maintain the safety and welfare of the participants at all times.

(2) Before starting a contest, the referee shall determine the name of the chief seconds for each participant. The chief second shall be responsible for the conduct of the participant's other seconds during the contest.

(3) The referee shall not allow any person other than the participant and the event physician to enter the ring during a round.

(4) The referee shall inspect the participants' bodies and gloves to make sure no substances have been applied to the detriment of an opponent.

(5) Referees who are event officials shall pass a physical examination by the event physician within twenty-four hours prior to an event for the purpose of determining their physical ability to referee the contest. If such examination indicates the referee is physically unable to referee the contest, such inability shall be noted on the prefight physical form and immediately be reported to the inspector or department representative.

(6) The referee shall have the authority to stop a contest any time he/she thinks it is too one-sided, or if either participant is in such condition that to continue might subject them to serious injury.

(7) The referee shall not make a disqualification decision based on one unintentional, low-blow foul. However, if two previous warnings for such fouls have resulted in point deductions, the third foul may be grounds for disqualification.

(8) The referee has authority to decide any matters that arise during a contest and are not covered by these rules.

(9) If a participant receives an injury that the referee thinks shall incapacitate the participant, the referee shall ask the event physician to examine the participant. The event physician shall provide the referee with an opinion as to the seriousness of the injury and either the event physician or the referee shall stop the contest if the injury is serious. When a referee calls the event physician into the ring, the referee shall direct the timekeeper to cease keeping time while the event physician examines the participant.

(10) The referee may penalize a participant who fouls an opponent during a contest, by charging such participant with the loss of points. The referee shall immediately notify the judges of the number of points to be deducted.

(11) The referee shall stop the contest if the participant's chief second determines that a contest should be stopped, and immediately signals the referee by stepping onto the ring apron, or top step of the cage.

(12) Prior to an event, each referee shall disclose to the department all considerations, including reimbursement for expenses that will be received from any source for participation in the event. The disclosure shall be made on a form supplied by the department.

(13) A decision rendered at the termination of any contest may be changed by the department if the department determines that one of the following occurred:

(a) There was collusion affecting the result of any contest;

(b) The compilation of the scorecard of the judges shows an error which would mean that the decision was given to the wrong contestant; or

(c) There was a violation of the laws or rules governing contests, which affected the result of any contest.

NEW SECTION

WAC 36-14-340 Event physician. (1) The event physician shall examine the participants and referees as required by RCW 67.08.090 and provide a report to the inspector or department representative in writing that discloses the results of the examinations and recommendations.

(2) Medical equipment to be utilized by an event physician for the prefight and postfight examinations of participants and referees shall consist of, but not be limited to, a blood pressure cuff, otoscope, ophthalmoscope, penlight, reflex hammer, stethoscope, thermometer, and tongue depressor.

(3) If the event physician determines that a participant or referee should not participate in an event due to a condition found during the prefight examination, the event physician shall recommend to the department that the participant or referee not participate in the event.

(4) An event physician shall be at ringside during all the contests in an event and shall be prepared to provide medical assistance to a participant if requested by the referee.

(5) The promoter shall provide the event physician with a suitable place to perform the prefight and postfight physical examinations.

(6) The event physician shall perform a postfight physical on each participant immediately following an event and may recommend temporary suspension of the participant's license due to injury incurred during a contest.

NEW SECTION

WAC 36-14-345 Foul procedures. (1) If a foul is committed, the referee shall:

(a) Call time;

(b) Check the fouled mixed martial artist's condition and safety; and

(c) Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges and the inspector.

(2) If a bottom contestant commits a foul, unless the top contestant is injured, the fight shall continue, so as not to jeopardize the top contestant's superior positioning at the time.

(a) The referee shall verbally notify the bottom contestant of the foul.

(b) When the round is over, the referee shall assess the foul and notify both corners' seconds, the judges and the official inspector.

(c) The referee may terminate a bout based on the severity of a foul. For such a flagrant foul, a contestant shall lose by disqualification.

NEW SECTION

WAC 36-14-350 Time considerations for fouls. (1) A participant who has been struck with a low blow is allowed up to five minutes to recover from the foul as long as in the ringside doctor's opinion the participant may continue in the contest. If the participant states they can continue on before the five minutes of time have expired, the referee shall as soon as practical restart the fight. If the participant goes over

the five minute time allotment, the fight cannot be restarted and the contest must come to an end with the outcome determined by the round and time in which the fight was stopped.

(2) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the participant who has been fouled can continue or not. If the participant's chance of winning has not been seriously jeopardized as a result of the foul and if the foul did not involve a concussive impact to the head of the participant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five minutes. Immediately after separating the participants, the referee shall inform the department's representative of his/her determination that the foul was accidental.

(3) If a participant is fouled by a blow the referee deems illegal the referee should stop the action and call for time. The referee may take the injured participant to the ringside physician and have the ringside physician examine the participant as to their ability to continue on in the contest. The ringside physician has up to five minutes to make their determination. If the ringside physician determines that the participant can continue in the contest, the referee shall as soon as practical restart the fight. However, unlike the low blow foul rule, the participant does not have up to five minutes of time to use at their discretion.

(4) For a foul other than a low blow, the fouled participant is not guaranteed five minutes of recovery time. If deemed not fit to continue by the referee or ringside physician, the referee must immediately call a halt to the bout. If the participant is deemed not fit to continue by the referee or ringside physician but some of the five minute foul time is still remaining, the participant cannot avail himself of the remaining time.

(5) If the referee stops the contest and employs the use of the ringside physician, the ringside physician's examination shall not exceed five minutes. If five minutes is exceeded, the fight cannot be restarted and the contest must end.

NEW SECTION

WAC 36-14-355 Outcome of contest. (1) Submission by:

(a) Tap out: When a contestant physically uses his/her hand to indicate that he or she no longer wishes to continue; or

(b) Verbal tap out: When a contestant verbally announces to the referee that he or she does not wish to continue or makes audible sounds such as screams indicating pain or discomfort.

(2) Technical knockout if:

(a) Referee stops bout;

(b) Ringside physician stops bout;

(c) An injury as a result of a legal maneuver is severe enough to terminate a bout;

(d) Cornerman signals referee to terminate the bout; or

(e) Participant, after putting forth good effort, signals referee his/her desire to stop fighting.

(3) Knockout by: Failure to rise from the canvas;

(4) Decision via score cards:

(a) Unanimous decision: When all three judges score the bout for the same contestant;

(b) Split decision: When two judges score the bout for one contestant and one judge scores for the opponent; or

(c) Majority decision: When two judges score the bout for the same contestant and one judge scores a draw;

(d) Draws:

(i) Unanimous draw - When all three judges score the bout a draw;

(ii) Majority draw - When two judges score the bout a draw; or

(iii) Split draw - When all three judges score differently and the score total results in a draw.

(5) Disqualification if:

(a) An injury sustained during competition as a result of an intentional foul is severe enough to terminate the contest;

(b) A participant quits after putting forth no effort, thereby fostering a sham on the public;

(c) Following a contest, a boxer tests positive for controlled substances per WAC 36-12-240.

(6) Technical decision if: A bout is stopped after the completion of two rounds in bouts scheduled for three rounds and after three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately. At least two of the judges must have the same contestant ahead on points;

(7) Technical draw if: A bout is stopped after the completion of two rounds in bouts scheduled for three rounds and after three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately and the judges are split (one voting for boxer A, one voting for boxer B, and the third judge with an even score);

(8) No decision if: A bout is stopped before the completion of two rounds in bouts scheduled for three rounds and before three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately;

(9) No contest if:

(a) The bout is unable to continue due to events other than fighting (fire, riot, ring collapse, etc.); or

(b) In the referee's judgment, there appears to be collusion affecting the outcome of the contest.

NEW SECTION

WAC 36-14-360 Suspensions. (1) A participant whose manager has been suspended under chapter 67.08 RCW may continue participating during the term of such suspension, signing his/her own participant/promoter contract.

(2) Participants scheduled for a contest shall sign a letter of agreement with the department accepting temporary suspension of their license if they receive an injury during the contest. The schedule for suspensions is:

(a) Thirty days for a technical knockout;

(b) Sixty days for a knockout;

(c) A period of time different than (a) and (b) of this subsection if serious injury or condition is detected by the event physician during the postfight physical; and

(d) A period of time or an indefinite period of time if serious injury or condition is detected by the event physician. If the suspension is for an indefinite period of time, the participant may not compete again without an examination completed by a physician who has provided written certification to the department that the medical condition no longer exists.

(3) If at any time a participant's ability to perform is questionable, whether for reasons of health, mental condition, or no longer possessing the ability to compete or for any other reason, the department may recommend that the participant be retired from further competition.

(4) Participants who have been recommended for retirement have a right to a hearing under chapter 34.05 RCW, Administrative Procedure Act.

NEW SECTION

WAC 36-14-365 Promoters. (1) Promoters shall not release the names of participants in an event to the media or otherwise publicize a contest unless a participant/promoter contract has been signed and the contest approved by the department.

(2) Promoters shall not schedule an event intermission that exceeds twenty minutes.

(3) Promoters shall dispense drinks only in plastic or paper containers.

(4) Advance notices for all bouts must be in the office of the department seven days prior to the holding of any event. In addition to the regular scheduled participants the advance notice must show the names of participants engaged by the promoter for an emergency bout.

(5) Changes in announced or advertised programs for any contest must be approved prior to the contest by the department. Notice of such change or substitution must also be given to the press, conspicuously posted at the box office, and announced from the ring or cage before the opening bout. If any ticket holders desire a refund, such refund shall be made at the box office prior to the start of the first bout.

(6) The promoter of an event shall contract with each participant for a contest. Original contracts shall be filed with the department at least five days prior to the event. The contract shall be on a form supplied by the department and contain at least the following:

(a) The weight of the participant at weigh-in;

(b) The amount of the purse to be paid for the contest;

(c) The date and location of the contest;

(d) Any other payment or consideration provided to the participant;

(e) List of all fees, charges and expenses including training expenses that will be assessed to the participant or deducted from the participant's purse;

(f) Any reduction in a participant's purse contrary to a previous agreement between the promoter and the participant; and

(g) The amount of any compensation or consideration that a promoter has contracted to receive from a match.

(7) If a participant/promoter contract is renegotiated, the promoter shall provide the department with the contract at least two hours prior to an event's scheduled start time.

(8) If the information from the contract in subsection (6)(e), (f), and (g) of this section is discloseable under Washington state public disclosure law, the promoter may instead provide the information to the Association of Boxing Commissions instead of including the information in the participant/promoter contract.

(9) The promoter of an event shall provide payments for the participants' purses and event official's fee in the form of checks or money orders to the department prior to an event. The department may allow other forms of payment if arranged in advance. The department shall pay the participants and officials immediately after the event, but not later than seventy-two hours from the conclusion of the event.

(10) Promoters shall provide seats for event officials and department representatives at ringside for each event.

(11) Promoters shall provide an ambulance or paramedical unit with transport and resuscitation capabilities, with a minimum of two attendants, to be present at the event location at all times during the event.

WSR 13-18-086
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed September 4, 2013, 11:39 a.m.]

Supplemental Notice to WSR 13-14-124.

Preproposal statement of inquiry was filed as WSR 12-24-090.

Title of Rule and Other Identifying Information: A new chapter in Title 314 WAC, chapter 314-55 WAC, Marijuana licenses and requirements.

Hearing Location(s): Washington State Liquor Control Board (WSLCB), 3000 Pacific Avenue S.E., Olympia, WA 98504, on October 9, 2013, at 10:00 a.m.

Date of Intended Adoption: October 16, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by October 4, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by October 4, 2013, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Initiative 502 legalized marijuana for recreational use under certain conditions. I-502 also created three new license types and requirements for each license type. Requirements were also created for the producing, processing, and retail sales of marijuana. This rule making is the first rule making to implement I-502. After listening to the comments at the public hearings and in reviewing the many written comments received on this rule making, substantial revisions are needed. These changes require a supplemental CR-102 be filed.

Reasons Supporting Proposal: This is a new industry in the state of Washington. Rules are needed to clarify the new laws created by I-502 so the public is aware of the qualifications and requirements for marijuana licenses in the state of Washington.

Statutory Authority for Adoption: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.325, 69.50.331, 69.50.334, 69.50.339, 69.50.342, 69.50.345, 69.50.348, 69.50.354, 69.50.357, 69.50.360, 69.50.369.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule: License applicants must submit a signed attestation that they are current on taxes owed, an operating plan and insurance coverage. The operating plan must include information on:

Producer License	Processor License	Retailer License
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation include growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a three-year period and must be made available for inspection if requested by an employee of the WSLCB:

(a) Purchase invoices and supporting documents, including the items and/or services purchased, from whom the items were purchased and the date of purchase.

(b) Bank statements and canceled checks for any accounts relating to the licensed business.

(c) Accounting and tax records related to the licensed business and each true party of interest.

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business.

(e) All employee records including training.

(f) Records of each daily application of pesticides applied to the marijuana plants or growing medium.

(g) Soil amendment, fertilizers or other crop production aids applied to the growing medium or used in the process of growing marijuana.

(h) Production and processing records including harvest and curing, weighing, destruction of marijuana, creating batches of marijuana infused products and packaging into lots and units.

(i) Records of each batch of extracts or infused marijuana products made.

(j) Transportation records as described in WAC 314-55-085.

(k) Inventory records.

(l) All samples sent to an independent testing lab and the quality assurance test results.

(m) All free samples provided to another licensee for purposes of negotiating a sale.

(n) All samples used for quality testing by the producer or processor.

(o) Sample jars containing usable marijuana provided to retailers.

(p) Records of any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, marijuana infused product or other item containing marijuana.

If the marijuana licensee keeps records within an automated data processing and/or point-of-sale system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply With Such Requirements: The type of professional services needed to comply with the recordkeeping obligations discussed in ques-

tion one would be bookkeeping and accounting. Businesses may also need legal assistance for zoning laws, agricultural assistance and technology assistance for implementing the traceability system.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: Indeterminate - There are currently no legally established marijuana businesses in the state.

4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue? Indeterminate - There are currently no legally established marijuana businesses in the state.

5. Costs of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

a. Cost per employee;

b. Cost per hour of labor; or

c. Cost per one hundred dollars of sales.

Indeterminate - There are currently no legally established marijuana businesses in the state.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: I-502 requires a tightly controlled and regulated marijuana market and includes strict controls to prevent diversion, illegal sales and sales to minors while providing reasonable access to products to mitigate the illicit market. The requirements in the rules are designed to comply with the initiative's mandate.

WSLCB contracted with BOTEC Analysis Corporation to provide technical expertise. BOTEC submitted two white papers on the cost of compliance with the draft rules and recommendations to minimize the burden on businesses. After review the board adopted some of the recommendations and amended the draft rules to attempt to minimize the financial burden on businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: There is currently no legally established marijuana business, large or small, in Washington state. To reach out to those interested in establishing a marijuana business the WSLCB held eight public forums across the state on the implementation of I-502. These forums were intended as a means of obtaining broad stakeholder input regarding the implementation of I-502 and the rule-making process.

Participating stakeholder groups included medical and recreational marijuana users, the prevention community, public safety interests, local government, neighborhood groups and entrepreneurs presently engaged in the medical marijuana industry as well as existing business and investors seeking entry into the new market.

Additionally, the board released initial draft rules for the emerging recreational marijuana market. The purpose of releasing the initial draft rules was to seek public comment before officially initiating the formal draft rule-making process. The initial draft rules were posted on the WSLCB web site and issued to over four thousand seven hundred subscribers on the agency's I-502 listserv. The board received two hundred twenty-one comments on the initial draft rules before the CR-102 was filed. After reviewing the comments the board adopted some of the recommendations and amended the draft rules to attempt to minimize the financial burden on businesses.

Since filing the CR-102 proposed rules on July 3, 2013, the board received one hundred thirty comments. The board held five public hearings across the state to solicit input. They received sufficient input to warrant refiling the proposed rules. Under the state Administrative Procedure Act, an agency must refile proposed rules if there are any substantive changes. After reviewing the additional comments the board adopted some of the recommendations and amended the draft rules to attempt to minimize the financial burden on businesses.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed marijuana producers, processors and retailers will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: Indeterminate - There are currently no legally established marijuana businesses in the state. The number of jobs created will depend on the number of applications received and licenses issues [issued].

A copy of the statement may be obtained by contacting Karen McCall, P.O. Box 43080, Olympia, WA 98504-43080 [98504-3080], phone (360) 664-1631, fax (360) 664-9689, e-mail rules@liq.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. A preliminary cost-benefit analysis was not required.

September 4, 2013
Sharon Foster
Chairman

Chapter 314-55 WAC

MARIJUANA LICENSES, APPLICATION PROCESS, REQUIREMENTS, AND REPORTING

NEW SECTION

WAC 314-55-005 What is the purpose of this chapter? The purpose of this chapter is to outline the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.

NEW SECTION

WAC 314-55-010 Definitions. Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(6) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(7) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(8) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(9) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(12) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(13) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, and insecticides.

(14) "Perimeter" means a property line that encloses an area.

(15) "Plant canopy" means the square footage dedicated to live plant production, such as maintain mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

(16) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

(17) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

(18) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

(19) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

(20) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

(21) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

(22) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

NEW SECTION

WAC 314-55-015 General information about marijuana licenses. (1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

NEW SECTION

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

(4) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(5) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation include growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	

Producer	Processor	Retailer
crop production aids, or pesticides, utilized in the production process		
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

NEW SECTION

WAC 314-55-035 What persons or entities have to qualify for a marijuana license? A marijuana license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest -** For purposes of this title, "true party of interest" means:

True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	• All general partners and their spouses. • All limited partners and spouses.
Limited liability company	• All members and their spouses. • All managers and their spouses.
Privately held corporation	• All corporate officers (or persons with equivalent title) and their spouses. • All stockholders and their spouses.
Publicly held corporation	All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of **financiers**) that are expecting a percentage of the profits in exchange for a monetary loan or expertise.	Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year. Any entity or person who exercises control over the licensed business in exchange for money or expertise. For the purposes of this chapter: • "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) **Financiers -** The board will conduct a financial investigation as well as a criminal background of financiers.

(4) **Persons who exercise control of business -** The board will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.

NEW SECTION

WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. This exception to the criminal history point assignment will expire on July 1, 2014:

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

NEW SECTION

WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license? The board will conduct an investigation of all applicants' marijuana law or rule administrative violation history. The board will not normally issue a marijuana license to a person, or to an entity with a true party of interest, who has the following violation history; or to any person who has demonstrated a pattern of disregard for laws or rules.

Violation Type (see WAC 314-55-515)	Period of Consideration
• Three or more public safety violations;	• Violations issued within three years of the date the application is received by the board's licensing and regulation division.
• Four or more regulatory violations; or	
• One to four, or more license violations.	• Violations issued within the last three years the true party(ies) of interest were licensed.

NEW SECTION

WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license. Following is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 66.50.331, the board has broad discretionary authority to approve or deny a marijuana

license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of the entities listed below:

(a) Elementary or secondary school;

(b) Playground;

(c) Recreation center or facility;

(d) Child care center;

(e) Public park;

(f) Public transit center;

(g) Library; or

(h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

(12) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(13) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

(14) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

(15) Failure to operate in accordance with the board approved operating plan.

(16) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

NEW SECTION

WAC 314-55-070 Process if the board denies a marijuana license application. If the board denies a marijuana license application, the applicants may:

(1) Request an administrative hearing per chapter 34.05 RCW, the Administrative Procedure Act.

(2) Reapply for the license no sooner than one year from the date on the final order of denial.

NEW SECTION

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is limited to two million square feet. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 – Less than two thousand square feet;

(b) Tier 2 – Two thousand square feet to ten thousand square feet; and

(c) Tier 3 – Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows – One and one-quarter of a year's harvest; or

(b) Indoor grows – Six months of their annual harvest.

NEW SECTION

WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license? (1) A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) A marijuana processor is allowed to blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(4) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(5) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

(6) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(7) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

NEW SECTION

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

NEW SECTION

WAC 314-55-081 Who can apply for a marijuana retailer license? (1) Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.

(2) The number of marijuana retail licenses determined by the board can be found on the liquor control board web site at www.liq.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses with

no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.

(4) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

NEW SECTION

WAC 314-55-082 Insurance requirements. Marijuana licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the marijuana licensees. Marijuana licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(1) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than one million dollars.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section shall be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The board shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

NEW SECTION

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured onsite in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) All marijuana or marijuana-infused products that are intended to be removed or transported from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts and marijuana-infused products must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana-infused product is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed or a lot or batch of marijuana or marijuana-infused product may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before useable marijuana, or marijuana-infused products are transported from a processor to a retailer.

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happened when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract and marijuana-infused products;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.** Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must immediately record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(f) Producers may sample one gram of useable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the useable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

NEW SECTION

WAC 314-55-084 Production of marijuana. Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

(1) Materials listed or registered by the Washington state department of agriculture (WSDA) or Organic Materials Review Institute (OMRI) as allowable for use in organic production, processing, and handling under the U.S. Department of Agriculture's national organics standards, also called the National Organic Program (NOP), consistent with requirements at 7 C.F.R. Part 205.

(2) Pesticides registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements.

(3) Commercial fertilizers registered by WSDA under chapter 15.54 RCW.

(4) Potting soil and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.

NEW SECTION

WAC 314-55-085 What are the transportation requirements for a marijuana licensee? (1) **Notification of shipment.** Upon transporting any marijuana or marijuana product, a producer, processor or retailer shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete transport manifest containing all information required by the board must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

(a) Only the marijuana licensee or an employee of the licensee may transport product;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;

(e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product.

NEW SECTION

WAC 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises? (1) **Notices regarding persons under twenty-one years of age** must be conspicuously posted on the premises as follows:

Type of licensee	Sign must contain the following language:	Required location of sign
Marijuana producer, marijuana processor, and marijuana retailer	"Persons under twenty-one years of age not permitted on these premises."	Conspicuous location at each entry to premises.

The board will provide the required notices, or licensees may design their own notices as long as they are legible and contain the required language.

(2) **Signs provided by the board prohibiting opening a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public,** must be posted as follows:

Type of premises	Required location of sign
Marijuana retail	Posted in plain view at the main entrance to the establishment.

(3) **The premises' current and valid master license with appropriate endorsements** must be conspicuously posted on the premises and available for inspection by liquor enforcement officers.

NEW SECTION

WAC 314-55-087 What are the recordkeeping requirements for marijuana licensees? (1) Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the

business. The following records must be kept and maintained on the licensed premises for a three-year period and must be made available for inspection if requested by an employee of the liquor control board:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest;

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) All employee records, to include training;

(f) Records of each daily application of pesticides applied to the marijuana plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:

(i) Full name of each employee who applied the pesticide;

(ii) The date the pesticide was applied;

(iii) The name of the pesticide or product name listed on the registration label which was applied;

(iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquor applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquor spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

(g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing marijuana;

(h) Production and processing records, including harvest and curing, weighing, destruction of marijuana, creating batches of marijuana-infused products and packaging into lots and units;

(i) Records of each batch of extracts or infused marijuana products made, including at a minimum, the lots of usable marijuana or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

(j) Transportation records as described in WAC 314-55-085;

(k) Inventory records;

(l) All samples sent to an independent testing lab and the quality assurance test results;

(m) All free samples provided to another licensee for purposes of negotiating a sale;

(n) All samples used for testing for quality by the producer or processor;

(o) Sample jars containing usable marijuana provided to retailers; and

(p) Records of any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, marijuana-infused product, or other item containing marijuana.

(2) If the marijuana licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

NEW SECTION

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

(a) On a form or electronic system designated by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a licensed marijuana processor.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report pur-

chases from licensed marijuana producers, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale of usable marijuana and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana retailer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana or marijuana-infused products.

NEW SECTION

WAC 314-55-092 What if a marijuana licensee fails to report or pay, or reports or pays late? (1) If a marijuana licensee does not submit its monthly reports and payment(s) to the board as required in WAC 314-55-089: The licensee is subject to penalties.

Penalties: A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the board to suspend or revoke a marijuana license.

NEW SECTION

WAC 314-55-095 Marijuana servings and transaction limitations. Marijuana dosage and transaction limitations are as follows:

(1) **Single serving.** A single serving of a marijuana-infused product amounts to ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(2) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed is ten servings or one hundred milligrams of active THC, or Delta 9. A single unit of marijuana-infused extract for inhalation cannot exceed one gram.

(3) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product in solid form, seven grams of marijuana-infused extract for inhalation, and seventy-two ounces of marijuana-infused product in liquid form for persons twenty-one years of age and older.

NEW SECTION

WAC 314-55-097 Marijuana waste disposal—Liquids and solids. (1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during marijuana production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it designates as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC 315-55-104).

(ii) Waste solvents used in the marijuana process (per WAC 315-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, retail facility, or laboratory. Disposal of the marijuana waste rendered unusable must follow the methods under subsection (6) of this section.

(a) Wastes that must be rendered unusable prior to disposal include, but are not limited to, the following:

(i) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(ii) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(iii) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the board to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the LCB.

(b) A producer or processor must provide the board a minimum of seventy-two hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.

(5) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Other methods to render marijuana waste unusable must be approved by LCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

(i) Food waste;

(ii) Yard waste;

(iii) Vegetable based grease or oils; or

(iv) Other wastes as approved by the LCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

(i) Paper waste;

(ii) Cardboard waste;

(iii) Plastic waste;

(iv) Soil; or

(v) Other wastes as approved by the LCB.

(6) Marijuana wastes rendered unusable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the marijuana waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the marijuana waste rendered unusable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of marijuana waste rendered unusable.

NEW SECTION

WAC 314-55-099 Standardized scales. (1) Marijuana producer and processor licensees must have at least one scale on the licensed premises for the traceability and inventory of products.

(2) The scales and other measuring devices are subject to chapter 19.94 RCW, and must meet the requirements of the most current version of chapters 16-662 and 16-664 WAC.

(3) Licensees must register scales on a business license application with business license services through the department of revenue as required under chapter 19.94 RCW.

NEW SECTION

WAC 314-55-102 Quality assurance testing. (1) A person with financial interest in an accredited third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests.

(2) As a condition of accreditation, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(3) As a condition of accreditation, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(4) As a condition of accreditation, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab.

(5) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(6) The general body of required quality assurance tests for marijuana flowers, infused products, and extracts may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(7) Table of required quality assurance tests.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Flowers to be sold as usable marijuana (see note below)	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (nonsolvent) like kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources	None	None
Extract (nonsolvent) like kief, hashish, bubble hash or infused dairy butter, or oils or fats derived from natural sources	1. Potency analysis 2. Foreign matter inspection 3. Microbiological screening	Up to 7 grams

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Flowers to be used to make an extract (solvent based), made with a CO_2 extractor, or with a food grade ethanol or glycerin	1. Foreign matter inspection 2. Microbiological screening	Up to 7 grams
Extract (solvent based) made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with a CO_2 extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade ethanol	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade glycerin or propylene glycol	1. Potency analysis	Up to 1 gram
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis	1 unit

(8) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (7) of this section for the purposes of completing required quality assurance tests. Labs meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab.

(9) Labs meeting the board's accreditation requirements are not limited in the amount of useable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(10) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (7) of this section for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(11) No lot of usable flower or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing.

(12) Any useable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" useable marijuana or marijuana-infused product will be allowed to be sold.

(13) If a lot of marijuana flowers fail a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also. Upon approval of the board, a lot that fails a quality assurance test may be used to make a CO_2 or solvent based extract. After processing, the CO_2 or solvent based extract must still pass all required quality assurance tests in WAC 314-55-102.

(14) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

NEW SECTION

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in a spark free environment with proper ventilation, and follow all applicable local fire, safety and building codes in processing and the storage of the solvents.

(3) Processors may use a professional grade closed loop CO_2 gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch and follow all applicable local fire, safety and building codes in processing and the storage of the solvents. The CO_2 must be of at least ninety-nine percent purity.

(4) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

(5) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

(6) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(7) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

NEW SECTION

WAC 314-55-105 Packaging and labeling requirements. (1) All usable marijuana and marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana or marijuana products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana or marijuana product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana or other marijuana product the customer is considering purchasing.

(4) usable marijuana and marijuana products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

(a) Lot number;

(b) UBI number of the producer; and

(c) Weight of the product.

(7) Marijuana-infused products meant to be eaten, swallowed, or inhaled, must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamper-proof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The sample jar and the usable marijuana within may not be sold to a customer and must be either returned to the licensed processor who provide the usable marijuana and sample jar or destroyed by the retailer after use in the manner described in WAC 314-55-097 and noted in the traceability system.

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) **All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:**

(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";

(b) "There may be health risks associated with consumption of this product";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12) **All marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:**

(a) "There may be health risks associated with consumption of this product";

(b) "This product is infused with marijuana or active compounds of marijuana";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours."

(g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and

(h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) **Labels affixed to the container or package containing usable marijuana sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;

(b) Lot number;

(c) Concentration of THC, THCA, CBD, including a total of active cannabinoids (potency profile);

(d) Net weight in ounces and grams or volume as appropriate;

(e) Warnings that state: "This product has intoxicating effects and may be habit forming";

(f) Statement that "This product may be unlawful outside of Washington state";

(g) Date of harvest.

(h) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(14) **Sample label mock up for a container or package containing usable marijuana sold at retail with required information:**

(Front of label)

UBI: 1234567890010001 Lot#: 1423

Date of Harvest: 4-14

The Best Resins

Blueberry haze

16.7 % THC 1.5% CBD

Warning – This product has intoxicating effect and may be habit forming

THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE

Net weight: 7 grams

(15) **Labels affixed to the container or package containing marijuana-infused products sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;

(b) Lot numbers of all base marijuana used to create the extract;

(c) Batch number;

(d) Date manufactured;

(e) Best by date;

(f) Recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;

(g) Net weight in ounces and grams, or volume as appropriate;

(h) List of all ingredients and any allergens;

(i) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours."

(j) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;

(k) Warnings that state: "This product has intoxicating effects and may be habit forming";

(l) Statement that "This product may be unlawful outside of Washington state";

(m) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(16) **Sample label mock up (front and back) for a container or package containing marijuana-infused products sold at retail with required information:**

(Front of label)

UBI: 1234567890010001 Batch#: 5463

The Best Resins

Space cake

CAUTION: when eaten the effects of this product can be delayed by as much as two hours.

Net weight: 6oz (128grams)

THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE

(Back of label)

Manufactured at: 111 Old Hwy Rd., Mytown, WA on 1/14/14 Best by 2/1/14

INGREDIENTS: Flour, Butter, Canola oil, Sugar, Chocolate, Marijuana, Strawberries,

CONTAINS ALLERGENS: Milk, Wheat,

Serving size: 10 MG of THC

This product contains 10 servings and a total of 100 MG of THC

Warning- This product has intoxicating effects and may be habit forming

NEW SECTION

WAC 314-55-120 Ownership changes. (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-55-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in the qualifying persons in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application.	Application fee and annual fee for current license privilege.
Change in the qualifying persons for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder.	$75
Change in the qualifying persons in a limited liability company.	Application for change of limited liability company member and/or manager.	$75

(2) The board may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

NEW SECTION

WAC 314-55-125 Change of location. (1) Changing your marijuana license to a new location requires an application, per the process outlined in WAC 314-55-020.

(2) A change of location occurs any time a move by the licensee results in any change to the physical location address.

NEW SECTION

WAC 314-55-130 Change of business name. (1) If you wish to change the name of your business, you must apply for a change of trade name with the department of revenue, business license service.

(2) If you wish to change your corporation or limited liability company name, you must apply for a change of name through the secretary of state.

(3) See chapter 434-12 WAC for guidelines for trade names.

NEW SECTION

WAC 314-55-135 Discontinue marijuana sales. You must notify the board's enforcement and education division in writing if you plan to stop doing business for more than thirty days, or if you plan to permanently discontinue marijuana sales.

NEW SECTION

WAC 314-55-140 Death or incapacity of a marijuana licensee. (1) The appointed guardian, executor, administrator, receiver, trustee, or assignee must notify the board's licensing and regulation division in the event of the death, incapacity, receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The board may give the appointed guardian, executor, administrator, receiver, trustee, or assignee written approval to continue marijuana sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(a) The person must be a resident of the state of Washington.

(b) A criminal background check may be required.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a marijuana license for the business.

NEW SECTION

WAC 314-55-145 Are marijuana license fees refundable? When a license is suspended or canceled, or the licensed business is discontinued, the unused portion of the marijuana license fee will not be refunded.

NEW SECTION

WAC 314-55-147 What hours may a marijuana retailer licensee conduct sales? A marijuana retailer licensee may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia between the hours of 8 a.m. and 12 a.m.

NEW SECTION

WAC 314-55-150 What are the forms of acceptable identification? (1) Following are the forms of identification that are acceptable to verify a person's age for the purpose of purchasing marijuana:

(a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identicard" issued by the Washington state department of licensing per RCW 46.20.-117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) The identification document is not acceptable to verify age if expired.

NEW SECTION

WAC 314-55-155 Advertising. (1) **Advertising by retail licensees.** The board limits each retail licensed premises to one sign identifying the retail outlet by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way. The size of the sign is limited to sixteen hundred square inches.

(2) **General.** All marijuana advertising and labels of useable marijuana and marijuana-infused products sold in the state of Washington may not contain any statement, or illustration that:

(a) Is false or misleading;

(b) Promotes over consumption;

(c) Represents the use of marijuana has curative or therapeutic effects;

(d) Depicts a child or other person under legal age to consume marijuana, or includes:

(i) Objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(3) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;

(b) On or in a public transit vehicle or public transit shelter; or

(c) On or in a publicly owned or operated property.

(4) Giveaways, coupons, and distribution of branded merchandise are banned.

(5) All advertising must contain the following warnings:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

NEW SECTION

WAC 314-55-160 Objections to marijuana license applications. (1) **How can persons, cities, counties, tribal governments, or port authorities object to the issuance of a marijuana license?** Per RCW 69.50.331, the board will notify cities, counties, tribal governments, and port authorities of the following types of marijuana applications. In addition to these entities, any person or group may comment in writing to the board regarding an application.

Type of application	Entities the board will/ may notify
• Applications for an annual marijuana license at a new location.	• Cities and counties in which the premises is located will be notified. Tribal governments and port authorities in which the premises is located may be notified.
• Applications to change the class of an existing annual marijuana license.	
• Changes of ownership at existing licensed premises.	• Cities and counties in which the premises is located will be notified. Tribal governments and port authorities in which the premises is located may be notified.

(2) **What will happen if a person or entity objects to a marijuana license application?** When deciding whether to issue or deny a marijuana license application, the board will give substantial weight to input from governmental jurisdictions in which the premises is located based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises; and other persons or groups. Note: Per RCW 69.50.331, the board shall not issue a new marijuana license if any of the following are within one thousand feet of the premises to be licensed: Any elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, game arcade where admission is not restricted to persons twenty-one years of age or older.

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a marijuana license application based on the objection from a governmental jurisdiction, the applicant(s) may either:

(i) Reapply for the license no sooner than one year from the date on the final order of denial; or

(ii) Submit a written request on a form provided by the board for an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The request must be received within twenty days of the date the intent to deny notification was mailed.

NEW SECTION

WAC 314-55-165 Objections to marijuana license renewals. (1) **How can local cities, counties, tribal governments, or port authorities object to the renewal of a marijuana license?**

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual marijuana licenses in that jurisdiction that are up for renewal.

(b) Per RCW 69.50.331, if a county, city, tribal government, or port authority wants to object to the renewal of a marijuana license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

(c) The county, city, tribal government, or port authority may submit a written request to the board for an extension for good cause shown.

(d) This letter must be received by the board at least thirty days before the marijuana license expires. The objection must state specific reasons and facts that show issuance of the marijuana license at the proposed location or to the applicant business how it will detrimentally impact the safety, health, or welfare of the community.

(e) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(f) Objections from the public will be referred to the appropriate city, county, tribal government, or port authority for action under subsection (2) of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate city, county, tribal government, or port authority. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

(2) **What will happen if a city, county, tribal government, or port authority objects to the renewal of a marijuana license?** The board will give substantial weight to a city, county, tribal government, or port authority objection to a marijuana license renewal of a premises in its jurisdiction based upon chronic illegal activity associated with the licensee's operation of the premises. Based on the jurisdiction's input and any information in the licensing file, the board will decide to either renew the marijuana license, or to pursue nonrenewal.

(a) **Board decides to renew the marijuana license:**	(b) **Board decides to pursue nonrenewal of the marijuana license:**
(i) The board will notify the jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.	(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.
(ii) The jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to renew notification was mailed. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.	(ii) The licensee may contest the nonrenewal action and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to deny notification was mailed. (iii) If the licensee requests a hearing, the governmental jurisdiction will be notified. (iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the marijuana license until a final decision is made.

NEW SECTION

WAC 314-55-505 What are the procedures for notifying a licensee of an alleged violation of a liquor control board statute or regulation? (1) When an enforcement officer believes that a licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee, licensee's agent, or employee.

(2) The AVN notice will include:

(a) A complete narrative description of the violation(s) the officer is charging;

(b) The date(s) of the violation(s);

(c) A copy of the law(s) and/or regulation(s) allegedly violated;

(d) An outline of the licensee's options as outlined in WAC 314-55-510; and

(e) The recommended penalty.

(i) If the recommended penalty is the standard penalty, see WAC 314-55-520 through 314-55-535 for licensees.

(ii) For cases in which there are aggravating or mitigating circumstances, the penalty may be adjusted from the standard penalty.

NEW SECTION

WAC 314-55-506 What is the process once the board summarily suspends a marijuana license? (1) The board may summarily suspend any license after the board's enforcement division has completed a preliminary staff investigation

of the violation and upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

NEW SECTION

WAC 314-55-507 How may a licensee challenge the summary suspension of his or her marijuana license? (1) Upon summary suspension of a license by the board pursuant to WAC 314-55-506, an affected licensee may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

NEW SECTION

WAC 314-55-508 Review of orders on stay. (1) The licensee, or agency, may petition the board for review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

NEW SECTION

WAC 314-55-510 What options does a licensee have once he/she receives a notice of an administrative violation? (1) **A licensee has twenty days from receipt of the notice to:**

(a) Accept the recommended penalty; or

(b) Request a settlement conference in writing; or

(c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?**

(a) If a licensee does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(3) **What are the procedures when a licensee requests a settlement conference?**

(a) If the licensee requests a settlement conference, the hearing examiner or designee will contact the licensee to discuss the violation.

(b) Both the licensee and the hearing examiner or designee will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or designee will prepare a compromise settlement agreement. The hearing examiner or designee will forward the compromise settlement agreement, authorized by both parties, to the board, or designee, for approval.

(i) If the board, or designee, approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board, or designee, does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearings examiner or designee, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or designee cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or designee will forward a request for an administrative hearing to the board's hearings coordinator.

NEW SECTION

WAC 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule? (1) The purpose of WAC 314-55-515 through 314-55-540 is to outline what penalty a marijuana licensee can expect if a licensee or employee violates a liquor control board law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive.)

(2) Penalties for violations by marijuana licensees or employees are broken down into four categories:

(a) Group One—Public safety violations, WAC 314-55-520.

(b) Group Two—Regulatory violations, WAC 314-55-525.

(c) Group Three—License violations, WAC 314-55-530.

(d) Group Four—Producer violations involving the manufacture, supply, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.

(3) For the purposes of chapter 314-55 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension, or alternate penalty, during a settlement conference as outlined in WAC 314-55-510(3).

(a) **Mitigating circumstances**	(b) **Aggravating circumstances**
Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.	Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of marijuana license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.
Examples include:	Examples include:
• Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee;	• Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries.
• Having an employee training plan that includes annual training on marijuana laws.	

NEW SECTION

WAC 314-55-520 Group 1 violations against public safety. Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4).

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Violations involving minors:	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age WAC 314-55-079	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Allowing a minor to frequent a restricted area. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	
Employee under legal age. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Licensee and/or employee open and/or consuming marijuana on a retail licensed premises. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. WAC 314-55-020(8) WAC 314-55-083(4) WAC 314-55-087 (1)(f)	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Adulterate usable marijuana with organic or nonorganic chemical or other compound WAC 314-55-105(8)	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized solvents or gases in processing WAC 314-55-104	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Marijuana purchased from an unauthorized source. **Marijuana sold to an unauthorized source.** **Sales in excess of transaction limitations.** WAC 314-55-095(3)	Cancellation of license Cancellation of license Cancellation of license			

NEW SECTION

WAC 314-55-525 Group 2 regulatory violations. Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m.	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Advertising violations – Sign exceeding 1600 square inches; within 1000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. RCW 69.50.357 RCW 69.50.369	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Packaging and/or labeling violations (processor/ retailer). WAC 314-55-105	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Records: Improper record-keeping. WAC 314-55-087 WAC 314-55-089 (3), (4), and (5)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to utilize and/or maintain traceability (processor or retail licensee). WAC 314-55-083(4)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure for a processor to meet marijuana waste disposal requirements. WAC 314-55-097	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Failure to maintain standardized scale requirements (processor/retailer). WAC 314-55-099	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Marijuana processor extraction requirements. WAC 314-55-104	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Retail outlet selling unauthorized products. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Retailer displaying products in a manner visible to the general public from a public right of way. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine

NEW SECTION

WAC 314-55-530 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
True party of interest violation. WAC 314-55-035	Cancellation of license			
Failure to furnish required documents. WAC 314-55-050	Cancellation of license			
Misrepresentation of fact. WAC 314-55-050	Cancellation of license			
Operating plan: Violations of a board-approved operating plan. WAC 314-55-020	5-day suspension or $500 monetary option	10-day suspension or $1,500 monetary option	30-day suspension	Cancellation of license
Failing to gain board approval for changes in existing ownership. WAC 314-55-120	30-day suspension	Cancellation of license		
Failure to maintain required insurance. WAC 314-55-080	30-day suspension	Cancellation of license		

NEW SECTION

WAC 314-55-535 Group 4 marijuana producer violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of marijuana by marijuana producer licensees and prohibited practices between a marijuana producer licensee and a marijuana retailer licensee.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Unauthorized sale to a retail licensee. WAC 314-55-075	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to utilize and/or maintain traceability. WAC 314-55-083(4)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Packaging and/or labeling violations (producer). WAC 314-55-105	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Unauthorized product/ unapproved storage or delivery.	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure for a producer to meet marijuana waste disposal requirements. WAC 314-55-097	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Records: Improper record-keeping. WAC 314-55-087 WAC 314-55-089 (2) and (4) WAC 314-55-092	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain standardized scale requirements (producer). WAC 314-55-099	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation.				

NEW SECTION

WAC 314-55-540 Information about marijuana license suspensions. (1) On the date a marijuana license suspension goes into effect, a liquor control officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a board law or rule.

(2) During the period of marijuana license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable marijuana laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of marijuana license suspension:

(a) A marijuana retailer or marijuana processor licensee may not operate his/her business during the dates and times of suspension.

(b) There is no sale, delivery, service, destruction, removal, or receipt of marijuana during a license suspension.

(c) A producer of marijuana may do whatever is necessary as a part of the producing process to keep current stock

that is on hand at the time of the suspension from spoiling or becoming unsalable during a suspension, provided it does not include processing the product. The producer may not receive any agricultural products used in the production of marijuana during the period of suspension.

WSR 13-18-087
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed September 4, 2013, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: WAC 182-503-0050 Washington apple health—Verification requirements, 182-512-0050 SSI-related medical—General information, 182-512-0100 SSI-related medical—Categorically needy (CN) medical eligibility, 182-512-0150 SSI-related medical—Medically needy (MN) medical eligibility, 182-512-0250 SSI-related medical—Ownership and availability of resources, 182-512-0260 SSI-related medical—How to count a sponsor's resources, 182-512-0350 SSI-related medical—Property and contracts excluded as resources, 182-512-0400 SSI-related medical—Vehicles excluded as resources, 182-512-0450 SSI-related medical—Life insurance excluded as a resource, 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources, 182-512-0550 SSI-related medical—All other excluded resources, 182-512-0600 SSI-related medical—Definition of income, 182-512-0650 SSI-related medical—Available income, 182-512-0700 SSI-related medical—Income eligibility, 182-512-0750 SSI-related medical—Countable unearned income, 182-512-0760 SSI-related medical—Education assistance, 182-512-0770 SSI-related medical—Native American benefits and payments, 182-512-0780 SSI-related medical—Employment and training programs, 182-512-0785, SSI-related medical—Effect of a sponsor's income, 182-512-0790 SSI-related medical—Exemption from sponsor deeming, 182-512-0795, SSI-related medical—Budgeting a sponsor's income, 182-512-0800 SSI-related medical—General income exclusions, 182-512-0820 SSI-related medical—Child-related income exclusions and allocations, 182-512-0840 SSI-related medical—Work- and agency-related income exclusions, 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws, 182-512-0880 SSI-related medical—Special income disregards, 182-512-0900 SSI-related medical—Deeming and allocating of income, 182-512-0920 SSI-related medical—Deeming/allocation of income from nonapplying spouse, 182-512-0940 SSI-related medical—Deeming income from an ineligible parent(s) to a child applying for SSI-related medical, and 182-512-0960 SSI-related medical—Allocating income—How the agency considers income and resources when determining eligibility for a person applying for noninstitutional medicaid when another household member is receiving institutional medicaid.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf, or directions can be obtained by calling (360) 725-1000), on October 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 9, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on October 8, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by October 1, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Phase 4.5 ACA WACs:** HCA is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the administration and supervision of Washington's medicaid program (Washington apple health (WAH)).

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Jessie Minier, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1501.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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

September 4, 2013
Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-503-0050 Washington apple health—Verification requirements. For the purposes of this section, "we" refers to HCA or its designee and "you" refers to the applicant for, or recipient of, health care coverage. We have

different eligibility verification processes and standards depending on whether the Washington apple health (WAH) program is a MAGI-based WAH program, a non-MAGI-based WAH program, or a deemed eligible program as described in WAC 182-503-0510.

(1) We may ask for verification of information at the time of application, renewal, or when you report a change in your household circumstances.

(2) The following provisions apply to all WAH programs.

(a) If the verification we require costs money, we will pay for it or get the information in another way.

(b) We use information from various data sources including, but not limited to, those listed below before asking you to provide information:

(i) Washington state employment security department;

(ii) The Internal Revenue Service;

(iii) United States Department of Homeland Security;

(iv) The Social Security Administration;

(v) Other state and federal data bases;

(vi) Other commercially available electronic data bases; and

(vii) Third-party contacts such as employers, landlords, and insurance companies.

(c) Following data-matching, we will only ask you for more information if:

(i) Information cannot be verified through a data-match;

(ii) The data-match is not reasonably compatible (as defined in WAC 182-500-0095) with the information you self-attested to or other sources; or

(iii) The information you self-attested to is contradictory, confusing, or outdated.

(d) When we need more information from you to determine your eligibility for WAH coverage, we send all notices according to the requirements of WAC 182-518-0015 and follow the rules below:

(i) If you are eligible for equal access services as described in WAC 182-503-0120 or limited-English proficiency services as described in WAC 182-503-0110, we help you comply with the requirements of this section.

(ii) We will not deny or delay your application because you fail to provide the information in a particular type or form. We must accept and consider alternative verification.

(iii) If you request more time to provide information, we allow you the time requested.

(iv) We will not deny you eligibility during any time period we have given you to provide more information unless we have conclusive evidence of your ineligibility.

(v) If we do not timely receive your information, we determine your eligibility based on the information we already received. If we cannot determine your eligibility, we deny or terminate your WAH coverage and send you a notice that states when we will reconsider the application as described in WAC 182-503-0080.

(vi) Once we verify an eligibility factor that is not subject to change, we will not require ongoing or additional verification of that factor. This includes, but is not limited to, family relationships; Social Security numbers; and dates of birth, death, marriage, dissolution of marriage, or legal separation.

(3) If you are applying for MAGI-based programs:

(a) Except as described in (b) of this subsection, we must accept your self-attestation (defined in WAC 182-500-0100) of eligibility factors (including your income and tax deductions). If your self-attestation indicates eligibility, we find you eligible for MAGI-based WAH.

(b) We follow the procedures in subsection (1) of this section and use data-matching to verify your citizenship or immigration status, and Social Security number. If we are unable to verify a required eligibility factor through data-matching, we ask you to provide the verification we need.

(c) After we have determined your eligibility, we may conduct a post-eligibility review to verify your self-attestation. We use various means to verify your circumstances including, but not limited to, information that is available from the following sources. We may also contact you or other people to clarify the information you provided.

(i) The supplemental nutrition assistance program (SNAP).

(ii) Department of social and health services cash programs, including temporary assistance for needy families (TANF), diversion cash assistance (DCA), refugee cash assistance (RCA), aged, blind, and disabled cash assistance (ABD), and pregnant women's cash assistance (PWA).

(4) If you are applying for non-MAGI-based programs:

(a) We must first verify your eligibility factors according to MAGI-based standards described in subsection (2) of this section. If you are eligible for a MAGI-based WAH program, we must find you eligible for that program.

(b) Even if you are eligible for MAGI-based coverage, we may still consider you for non-MAGI-based programs if the programs offer you services or coverage options that are not available in MAGI-based programs.

(c) We may need additional verification to determine eligibility for non-MAGI-based programs including, but not limited to:

(i) Income and income deductions;

(ii) Medical expenses required to meet a spenddown liability (see WAC 182-519-0110);

(iii) Medical expenses and other post-eligibility deductions used to determine eligibility for long-term care programs (see WAC 182-513-1380);

(iv) Resources; and

(v) Any other questionable information.

(d) Additional eligibility factors and verification standards are described in:

(i) Chapter 182-507 WAC, refugee medical and alien medical programs;

(ii) Chapter 182-508 WAC, medical care services;

(iii) Chapter 182-511 WAC, WAH for workers with disabilities;

(iv) Chapter 182-512 WAC, SSI-related medical programs;

(v) Chapters 182-513 and 182-515 WAC, SSI-related long-term care programs;

(vi) Chapter 182-517 WAC, medicare savings programs; and

(vii) Chapter 182-519 WAC, medically needy and spenddown programs.

(5) If you are determined eligible for one of the programs described in WAC 182-503-0510(4), we do not require additional verification of information from you.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0050 SSI-related medical—General information. (1) The ((~~department~~)) agency (which includes its designee for purposes of this chapter) provides ((~~medical benefits~~)) health care coverage under the Washington apple health (WAH) categorically needy (CN) and medically needy (MN) SSI-related programs for SSI-related people, meaning those who meet at least one of the federal SSI program criteria as being:

(a) Age sixty-five or older;

(b) Blind with:

(i) Central visual acuity of 20/200 or less in the better eye with the use of a correcting lens; or

(ii) A field of vision limitation so the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(c) Disabled:

(i) "Disabled" means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, which:

(A) Can be expected to result in death; or

(B) Has lasted or can be expected to last for a continuous period of not less than twelve months; or

(C) In the case of a child seventeen years of age or younger, if the child suffers from any medically determinable physical or mental impairment of comparable severity.

(ii) Decisions on SSI-related disability are subject to the authority of:

(A) Federal statutes and regulations codified at 42 U.S.C. ((~~See~~)) Section 1382c and 20 C.F.R., parts 404 and 416, as amended; and

(B) Controlling federal court decisions, which define the OASDI and SSI disability standard and determination process.

(2) A denial of Title II or Title XVI federal benefits by SSA solely due to failure to meet the blindness or disability criteria is binding on the ((~~department~~)) agency unless the applicant's:

(a) Denial is under appeal in the reconsideration stage in SSA's administrative hearing process, or SSA's appeals council; or

(b) Medical condition has changed since the SSA denial was issued.

(3) The ((~~department~~)) agency considers a ((~~client~~)) person who meets the special requirements for SSI status under Sections 1619(a) or 1619(b) of the Social Security Act as an SSI recipient. Such a ((~~client~~)) person is eligible for WAH CN ((~~medical~~)) health care coverage under WAC ((~~388-474-0005~~)) 182-510-0001.

(4) ((~~Individuals~~)) Persons referred to in subsection (1) must also meet appropriate eligibility criteria found in the following WAC and EA-Z Manual sections:

(a) For all programs:

(i) WAC ((~~388-408-0055~~)) 182-506-0015, Medical assistance units;

(ii) WAC ((~~388-416-0015~~)) 182-504-0015, Categorically needy and WAC ((~~388-416-0020~~)) 182-504-0020, Medically needy certification periods;

(iii) Program specific requirements in chapter ((~~388-475~~)) 182-512 WAC;

(iv) WAC ((~~388-490-0005~~)) 182-503-0050, Verification;

(v) WAC ((~~388-503-0505~~)) 182-503-0505, General eligibility requirements for medical programs;

(vi) WAC ((~~388-505-0540~~)) 182-503-0540, Assignment of rights and cooperation;

(vii) Chapter ((~~388-561~~)) 182-516 WAC, Trusts, annuities and life estates.

(b) For LTC programs:

(i) Chapter ((~~388-513~~)) 182-513 WAC, Long-term care services;

(ii) Chapter ((~~388-515~~)) 182-515 WAC, Waiver services.

(c) For WAH MN, chapter ((~~388-519~~)) 182-519 WAC, Spenddown;

(d) For WAH HWD, program specific requirements in chapter ((~~388-475~~)) 182-511 WAC.

(5) Aliens who qualify for medicaid ((~~benefits~~)) coverage, but are determined ineligible because of alien status may be eligible for programs as specified in WAC ((~~388-438-0110~~)) 182-507-0110.

(6) The ((~~department~~)) agency pays for a ((~~client's~~)) person's medical care outside of Washington according to WAC ((~~388-501-0180~~)) 182-501-0180.

(7) The ((~~department~~)) agency follows income and resource methodologies of the supplemental security income (SSI) program defined in federal law when determining eligibility for SSI-related medical or medicare cost savings programs unless the ((~~department~~)) agency adopts rules that are less restrictive than those of the SSI program.

(8) Refer to WAC ((~~388-418-0025~~)) 182-504-0125 for effects of changes on medical assistance for redetermination of eligibility.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0100 SSI-related medical—Categorically needy (CN) medical eligibility. (1) Washington apple health (WAH) categorically needy (CN) coverage is available for an SSI-related ((~~client~~)) person who: ((~~(a)~~)) Meets the criteria in WAC ((~~388-475-0050~~)) 182-512-0050, SSI-related medical—General information((~~; or~~

~~(b) Meets the criteria for the state-funded general assistance - Expedited medicaid disability (GA-X) program by meeting the:~~

~~(i) Requirements of the cash program in WAC 388-400-0025 and 388-478-0030; or~~

~~(ii) SSI-related disability standards but who cannot get the SSI cash grant due solely to immigration status or sponsor deeming issues~~)).

(2) To be eligible for SSI-related WAH CN medical programs, a person must also have:

(a) Countable income and resources at or below the SSI-related WAH CN medical monthly standard (refer to WAC ((~~388-478-0080~~)) 182-512-0010) or be eligible for an SSI cash grant but choose not to receive it; or

(b) Countable resources at or below the SSI resource standard and income above the SSI-related WAH CN medical monthly standard, but the countable income falls below that standard after applying special income disregards as described in WAC ((~~388-475-880~~)) 182-512-0880; or

(c) Met requirements for long-term care (LTC) WAH CN income and resource requirements that are found in chapters ((~~388-513~~)) 182-513 and ((~~388-515~~)) 182-515 WAC if wanting LTC or waiver services.

(3) An ineligible spouse of an SSI recipient is not eligible for noninstitutional SSI-related WAH CN ((~~medical benefits~~)) health care coverage. If an ineligible spouse of an SSI recipient has dependent children in the home, eligibility may be determined for family medical programs.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0150 SSI-related medical—Medically needy (MN) medical eligibility. (1) Washington apple health (WAH) medically needy (MN) ((~~medical~~)) health care coverage is available for any of the following:

(a) ((~~An individual~~)) A person who is SSI-related and not eligible for WAH categorically needy (CN) medical coverage because the ((~~individual~~)) person has countable income that is above the WAH CN income ((~~standard~~)) level (CNIL) (or for long-term care (LTC) ((~~clients~~)) recipients, above the special income limit (SIL)):

(i) The ((~~individual's~~)) person's countable income is at or below WAH MN standards, leaving no spenddown requirement; or

(ii) The ((~~individual's~~)) person's countable income is above WAH MN standards requiring the ((~~individual~~)) person to spenddown their excess income (see subsection (4) of this section). See WAC 182-512-0500 through 182-512-0800 for rules on determining countable income, and WAC 182-519-0050 for program standards or chapter ((~~388-513~~)) 182-513 WAC for institutional standards.

(b) An SSI-related ineligible spouse of an SSI recipient;

(c) ((~~An individual~~)) A person who meets SSI program criteria but is not eligible for the SSI cash grant due to immigration status or sponsor deeming. See WAC ((~~388-424-0010~~)) 182-503-0535 for limits on eligibility for aliens;

(d) ((~~An individual~~)) A person who meets the WAH MN LTC services requirements of chapter ((~~388-513~~)) 182-513 WAC;

(e) ((~~An individual~~)) A person who lives in an alternate living facility and meets the requirements of WAC ((~~388-513-1305~~)) 182-513-1305; or

(f) ((~~An individual~~)) A person who meets resource requirements as described in chapter 182-512 WAC, elects and is certified for hospice services per chapter 182-551 WAC.

(2) ((~~Individuals~~)) A person whose countable resources are above the SSI resource standards ((~~are~~)) is not eligible for WAH MN noninstitutional ((~~medical benefits~~)) health care coverage. See WAC 182-512-0200 through 182-512-0550 to determine countable resources.

(3) ((~~Individuals~~)) A person who ((~~qualify~~)) qualifies for services under WAH long-term care ((~~have~~)) programs has different criteria and may spend down excess resources to become eligible for WAH LTC institutional or waiver ((~~medical benefits~~)) health care coverage. Refer to WAC ((~~388-513-1315~~)) 182-513-1315 and ((~~388-513-1395~~)) 182-513-1395.

(4) ((~~An individual~~)) A person with income over the effective ((~~medically needy~~)) WAH MN income limit (MNIL) described in WAC 182-519-0050 may become eligible for WAH MN coverage when the ((~~individual~~)) person has incurred medical expenses that are equal to the excess income. This is the process of meeting spenddown. Refer to chapter 182-519 WAC for spenddown information.

(5) ((~~An individual~~)) A person may be eligible for ((~~medical~~)) health care coverage for up to three months immediately prior to the month of application, if the ((~~individual~~)) person has:

(a) Met all eligibility requirements for the months being considered; and

(b) Received medical services covered by medicaid during that time.

(6) ((~~An individual~~)) A person who is eligible for WAH MN without a spenddown is certified for up to twelve months. For ((~~an individual~~)) a person who must meet a spenddown, refer to WAC 182-519-0110. For a person who is eligible for a WAH long-term care MN ((~~individual~~)) program, refer to WAC ((~~388-513-1305~~)) 182-513-1305 and ((~~388-513-1315~~)) 182-513-1315.

(7) ((~~An individual~~)) A person must reapply for each certification period. There is no continuous eligibility for WAH MN. ((~~Although each additional certification period requires a new application, if the medical benefits have been closed less than thirty days, an eligibility review form may be used to reapply.~~))

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0250 SSI-related medical—Ownership and availability of resources. (1) The agency considers personal or real property ((~~is~~)) to be available to ((~~the client if the client, client's~~)) a Washington apple health (WAH) applicant or recipient, their spouse or other financially responsible person if the applicant or recipient:

(a) Owns the property;

(b) Has the authority to convert the property into cash;

(c) Can expect to convert the property to cash within twenty working days; and

(d) May legally use the property for his/her support.

(2) The agency counts the resources of financially responsible persons (as defined in WAC 182-506-0010) who live in the home even if those persons do not receive WAH coverage.

(3) Cash or resources owned by a WAH applicant or recipient or their spouse but held or directed by another, such as, but not limited to, an authorized representative, guardian,

or power of attorney, are considered an available resource to the applicant or recipient.

(4) For long-term care services, cash or resources transferred by a WAH applicant or recipient or their spouse to another person, persons, or entity for purposes of paying for the WAH applicant or recipient's long-term care services, whether on a current or a prepaid basis, is considered an available resource to the applicant or recipient.

(5) A resource is considered available on the first day of the month following the month of receipt unless a rule about a specific type of resource provides for a different time period.

(((~~(3)~~))) (6) A resource, which ordinarily cannot be converted to cash within twenty working days, is considered unavailable as long as a reasonable effort is being made to convert the resource to cash.

(((~~(4)~~))) (7) A ((~~client~~)) person may provide evidence showing that a resource is unavailable. A resource is not counted if ((~~a client~~)) the person shows sufficient evidence that the resource is unavailable.

(((~~(5)~~))) (8) We do not count the resources of victims of family violence, as defined in WAC 388-452-0010, when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the ((~~client~~)) person at risk of harm.

(((~~(6)~~))) (9) The value of a resource is its fair market value minus encumbrances.

(((~~(7)~~))) (10) Refer to WAC ((~~388-470-0060~~)) 182-512-0260 to consider additional resources when an alien has a sponsor.

NEW SECTION

WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources. (1) The agency counts part of a sponsor's resources as available to a applicant or recipient of Washington apple health (WAH) SSI-related health care coverage if:

(a) The person is a sponsored immigrant as defined in WAC 182-512-0785; and

(b) The person is not exempt from deeming under WAC 182-512-0790.

(2) The agency determines the amount of the sponsor's resources to count by:

(a) Totaling the countable resources of the sponsor and the sponsor's spouse (if the spouse signed the affidavit of support);

(b) Subtracting fifteen hundred dollars; and

(c) Counting the remaining amount as a resource that is available to the person.

(3) When a sponsor has sponsored other people as well, the agency divides the result by the total number of people sponsored.

(4) A sponsor's resources are counted when determining eligibility for WAH coverage until the person becomes exempt from deeming under WAC 182-512-0790.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources. (1) The ((~~department~~)) agency does not count the following resources when determining eligibility for SSI-related medical assistance:

(a) A ((~~client's~~)) person's household goods and personal effects;

(b) One home (which can be any shelter), including the land on which the dwelling is located and all contiguous property and related out-buildings in which the ((~~client~~)) person has ownership interest (for WAH long-term care programs, see WAC 182-513-1350 for home equity limits), when:

(i) The ((~~client~~)) person uses the home as his or her primary residence; or

(ii) The ((~~client's~~)) person's spouse lives in the home; or

(iii) The ((~~client~~)) person does not currently live in the home but the ((~~client~~)) person or his/her representative has stated ((~~the client~~)) he or she intends to return to the home; or

(iv) A relative, who is financially or medically dependent on the ((~~client~~)) person, lives in the home and the ((~~client, client's~~)) person, or his or her authorized representative((~~,~~)) or dependent relative has provided a written statement to that effect.

(c) The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:

(i) Uses the property as his or her principal place of residence;

(ii) Would have to move if the property were sold; and

(iii) Has no other readily available housing.

(2) Cash proceeds from the sale of the home described in subsection (1)(b) ((~~above~~)) of this section are not considered if the ((~~client~~)) person uses them to purchase another home by the end of the third month after receiving the proceeds from the sale.

(3) An installment contract from the sale of the home described in subsection (1)(b) above is not a resource as long as the person plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home, and does so within three full calendar months after the month of receiving such down payment or installment payment.

(4) The value of sales contracts is excluded when the:

(a) Current market value of the contract is zero,

(b) Contract cannot be sold, or

(c) Current market value of the sales contract combined with other resources does not exceed the resource limits.

(5) Sales contracts executed before December 1, 1993, are exempt resources as long as they are not transferred to someone other than a spouse.

(6) A sales contract for the sale of the ((~~client's~~)) person's principal place of residence executed between December 1, 1993 and May 31, 2004 is considered an exempt resource unless it has been transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property; and

(c) The term of the contract does not exceed thirty years.

(7) A sales contract executed on or after June 1, 2004 on a home that was the principal place of residence for the ((~~client~~)) person at the time of institutionalization is considered exempt as long as it is not transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property within the anticipated life expectancy of the ((~~client~~)) person; and

(c) The term of the contract does not exceed thirty years.

(8) Payments received on sales contracts of the home described in subsection (1)(b) ((~~above~~)) of this section are treated as follows:

(a) The interest portion of the payment is treated as unearned income in the month of receipt of the payment;

(b) The principal portion of the payment is treated as an excluded resource if reinvested in the purchase of a new home within three months after the month of receipt;

(c) If the principal portion of the payment is not reinvested in the purchase of a new home within three months after the month of receipt, that portion of the payment is considered a liquid resource as of the date of receipt.

(9) Payments received on sales contracts described in subsection (4) of this section are treated as follows:

(a) The principal portion of the payment on the contract is treated as a resource and counted toward the resource limit to the extent retained at the first moment of the month following the month of receipt of the payment; and

(b) The interest portion is treated as unearned income the month of receipt of the payment.

(10) For sales contracts that meet the criteria in subsections (5), (6), or (7) of this section but do not meet the criteria in subsections (3) or (4) of this section, both the principal and interest portions of the payment are treated as unearned income in the month of receipt.

(11) Property essential to self-support is not considered a resource within certain limits. The ((~~department~~)) agency places property essential to self-support in several categories:

(a) Real and personal property used in a trade or business (income-producing property), such as:

(i) Land((~~,~~));

(ii) Buildings((~~,~~));

(iii) Equipment((~~,~~));

(iv) Supplies((~~,~~));

(v) Motor vehicles((~~,~~)); and

(vi) Tools.

(b) Nonbusiness income-producing property, such as:

(i) Houses or apartments for rent((~~, or~~)); and

(ii) Land, other than home property.

(c) Property used to produce goods or services essential to ((~~an individual's~~)) a person's daily activities, such as land used to produce vegetables or livestock, which is only used for personal consumption in the ((~~individual's~~)) person's household. This includes personal property necessary to perform daily functions including vehicles such as boats for subsistence fishing and garden tractors for subsistence farming, but does not include other vehicles such as those that qualify as automobiles (cars, trucks).

(12) The ((~~department will~~)) agency excludes ((~~an individual's~~)) a person's equity in real and personal property used in a trade or business (income producing property listed in subsection (11)(a) ((~~above~~)) of this section) regardless of value as long as it is currently in use in the trade or business and remains used in the trade or business.

(13) The ((~~department~~)) agency excludes up to six thousand dollars of ((~~an individual's~~)) a person's equity in nonbusiness income-producing property listed in subsection (11)(b) ((~~above~~)) of this section, if it produces a net annual income to the ((~~individual~~)) person of at least six percent of the excluded equity.

(a) If a person's equity in the property is over six thousand dollars, only the amount over six thousand dollars is counted toward the resource limit, as long as the net annual income requirement of six percent is met on the excluded equity.

(b) If the six percent requirement is not met due to circumstances beyond the person's control, and there is a reasonable expectation that the activities will again meet the six percent rule, the same exclusions as in subsection (13)(a) ((~~above~~)) of this section apply.

(c) If a person has more than one piece of property in this category, each is looked at to see if it meets the six percent return and the total equities of all those properties are added to see if the total is over six thousand dollars. If the total is over the six thousand dollars limit, the amount exceeding the limit is counted toward the resource limit.

(d) The equity in each property that does not meet the six percent annual net income limit is counted toward the resource limit, with the exception of property that represents the authority granted by a governmental agency to engage in an income-producing activity if it is:

(i) Used in a trade or business or nonbusiness income-producing activity; or

(ii) Not used due to circumstances beyond the ((~~individual's~~)) person's control, e.g., illness, and there is a reasonable expectation that the use will resume.

(14) Property used to produce goods or services essential to ((~~an individual's~~)) a person's daily activities is excluded if the ((~~individual's~~)) person's equity in the property does not exceed six thousand dollars.

(15) Personal property used by ((~~an individual~~)) a person for work is not counted, regardless of value, while in current use, or if the required use for work is reasonably expected to resume.

(16) Interests in trust or in restricted Indian land owned by ((~~an individual~~)) a person who is of Indian descent from a federally recognized Indian tribe or held by the spouse or widow/er of that ((~~individual~~)) person, is not counted if permission of the other ((~~individuals~~)) persons, the tribe, or an agency of the federal government must be received in order to dispose of the land.

(17) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources, such as fishing, shell-fishing, or selling timber from protected land, is considered conversion of an exempt resource during the month of receipt. Any

amount remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if it is used to purchase another exempt resource. Any amount remaining in the form of a countable resource (such as in a checking or savings account) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources. (1) For SSI-related medical programs, a vehicle is defined as anything used for transportation. In addition to cars and trucks, a vehicle can include boats, snowmobiles, and animal-drawn vehicles.

(2) One vehicle is excluded regardless of its value, if it is used to provide transportation for the disabled ((~~individual~~)) person or a member of the ((~~individual's~~)) person's household.

(3) For ((~~an~~)) a person receiving SSI-related institutional ((~~client with~~)) coverage who has a community spouse, one vehicle is excluded regardless of its value or its use. See WAC ((~~388-513-1350~~)) 182-513-1350 (7)(b).

(4) A vehicle used as the ((~~client's~~)) person's primary residence is excluded as the home, and does not count as the one excluded vehicle under subsection (2) or (3) of this section.

(5) All other vehicles, except those excluded under WAC ((~~388-475-0350~~)) 182-512-0350 (11) through (14), are treated as nonliquid resources and the equity value is counted toward the resource limit.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource. (1) The ((~~department~~)) agency excludes life insurance policies that do not have or cannot accrue a cash surrender value (CSV) in determining whether owned policies exceed the life insurance exclusion limits for resources and in determining burial fund exclusion limits.

(2) Policies owned by each spouse are evaluated and counted separately.

(3) If the total face value of all policies with a CSV potential that a person owns on the same insured is equal to or less than fifteen hundred dollars, the resource is excluded.

(4) If the total face value of all policies with a CSV potential that a person owns on the same insured is more than fifteen hundred dollars, the total CSV of the policies is counted toward the resource limit, unless the ((~~client~~)) person designates such policies as burial funds. If they are designated as burial funds, they must be evaluated under the burial fund exclusion described in WAC ((~~388-475-0500~~)) 182-512-0500.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources. (1) For the purposes of this section, burial funds are funds set aside and clearly designated solely for burial and related expenses and kept separate from all other resources not intended for burial. These include:

(a) Revocable burial contracts;

(b) Revocable burial trusts;

(c) Installment contracts for purchase of a burial space on which payments are still owing;

(d) Other revocable burial arrangements. The designation is effective the first day of the month in which the person intended the funds to be set aside for burial.

(2) The following burial funds are excluded as resources for the ((~~client~~)) person and his or her spouse up to fifteen hundred dollars each when set aside solely for the expenses of burial or cremation and expenses related to the burial or cremation, and the funds are either:

(a) An installment contract for purchase of a burial space that is not yet paid in full; or

(b) In a revocable burial contract, burial trust, cash accounts, or other financial instrument with a definite cash value.

(3) Interest earned in burial funds and appreciation in the value of excluded burial arrangements in subsection (2)(a) and (b) ((~~above~~)) of this section are excluded from resources and are not counted as income if left to accumulate and become part of the separate burial fund.

(4) The fifteen hundred dollar exclusion for burial funds described in subsection (2) ((~~above~~)) of this section is reduced by:

(a) The face value of life insurance with CSV excluded in WAC ((~~388-475-0450~~)) 182-512-0450; and

(b) Amounts in an irrevocable burial trust, or other irrevocable arrangement available to meet burial expenses, or burial space purchase agreement installment contracts on which money is still owing. If these reductions bring the balance of the available exclusion to zero, no additional funds can be excluded as burial funds.

(5) An irrevocable burial account, burial trust, or other irrevocable burial arrangement, set aside solely for burial and related expenses is not considered a resource. The amount set aside must be reasonably related to the anticipated death-related expenses in order to be excluded.

(6) A ((~~client's~~)) person's burial funds are no longer excluded when they are mixed with other resources that are not related to burial.

(7) When excluded burial funds are spent for other purposes, the spent amount is added to other countable resources and any amount exceeding the resource limit is considered available income on the first of the month it is used. The amount remaining in the burial fund remains excluded.

(8) Burial space and accessories for the ((~~client~~)) person and any member of the ((~~client's~~)) person's immediate family described in subsection (9) of this section are excluded. Burial space and accessories include:

(a) Conventional gravesites;

(b) Crypts, niches, and mausoleums;

(c) Urns, caskets and other repositories customarily used for the remains of deceased persons;

(d) Necessary and reasonable improvements to the burial space including, but not limited to:

(i) Vaults and burial containers;

(ii) Headstones, markers and plaques;

(iii) Arrangements for the opening and closing of the gravesite; and

(iv) Contracts for care and maintenance of the gravesite.

(e) A burial space purchase agreement that is currently paid for and owned by the ((~~client~~)) person is also defined as a burial space. The entire value of the purchase agreement is excluded; as well as any interest accrued, which is left to accumulate as part of the value of the agreement. The value of this agreement does not reduce the amount of burial fund exclusion available to the ((~~client~~)) person.

(9) Immediate family, for the purposes of subsection (8) of this section includes the ((~~client's~~)) person's:

(a) Spouse;

(b) Parents and adoptive parents;

(c) Minor and adult children, including adoptive and stepchildren;

(d) Siblings (brothers and sisters), including adoptive and stepsiblings;

(e) Spouses of any of the above.

None of the family members listed above, need to be dependent on or living with the ((~~client~~)) person, to be considered immediate family members.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a ((~~client~~)) person who is blind or disabled to fulfill a ((~~department approved~~)) self-sufficiency plan approved by the agency.

(2) Retroactive payments from SSI or RSDI, including benefits a ((~~client~~)) person receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the ((~~client,~~)) person, the person's spouse, or any other person financially responsible for the ((~~client~~)) person;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through ((~~(12)~~)) (11) of this section as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to ((~~Native~~)) American((~~s~~)) Indians/Alaska Natives as listed in 20 C.F.R. 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 C.F.R. 416.1236.

(6) The following ((~~Native~~)) American Indian/Alaska Native funds are excluded resources:

(a) Resources received from a native corporation under the Alaska Native Claims Settlement Act, including:

(i) Shares of stock held in a regional or village corporation;

(ii) Cash or dividends on stock received from the native corporation up to two thousand dollars per person per year;

(iii) Stock issued by a native corporation as a dividend or distribution on stock;

(iv) A partnership interest;

(v) Land or an interest in land; and

(vi) An interest in a settlement trust.

(b) All funds contained in a restricted individual Indian money (IIM) account.

(7) Exercise of federally protected rights, including extraction of exempt resources by a member of a federally recognized tribe during the month of receipt. Any funds from the conversion of the exempt resource which are retained on the first of the month after the month of receipt will be considered exempt if they are in the form of an exempt resource, and will be countable if retained in the form of a countable resource.

(8) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(9) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(10) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(11) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(12) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(13) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(14) Tax refunds and earned income tax credit refunds and payments are excluded as resources for twelve months after the month of receipt.

(15) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(16) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The ((~~client~~)) person intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

(17) Insurance proceeds or other assets recovered by a Holocaust survivor ((~~as defined in WAC 388-470-0026(4)~~)).

(18) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed ((~~individuals~~)) persons, known as Keogh plans).

(19) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(20) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled ((~~individuals~~)) persons to set aside resources necessary for the achievement of the plan's goals, are excluded.

(21) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(22) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(23) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

(24) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ http://policy.ssa.gov/poms.nsf/lnx/0501130050.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0600 SSI-related medical—Definition of income. (1) Income is anything ((~~an individual~~)) a person receives in cash or in-kind that can be used to meet his/her needs for food, clothing, or shelter. Income can be earned or unearned.

(2) Some receipts are not income because they do not meet the definition of income above, including:

(a) Cash or in-kind assistance from federal, state, or local government programs whose purpose is to provide medical care or services;

(b) Some in-kind payments that are not food, clothing or shelter coming from nongovernmental programs whose purposes are to provide medical care or medical services;

(c) Payments for repair or replacement of an exempt resource;

(d) Refunds or rebates for money already paid;

(e) Receipts from sale of a resource;

(f) Replacement of income already received((~~.~~)) (see 20 C.F.R. 416.1103 for a more complete list of receipts that are not income); and

(g) Receipts from extraction of exempt resources for a member of a federally recognized tribe.

(3) Earned income includes the following types of payments:

(a) Gross wages and salaries, including garnished amounts;

(b) Commissions and bonuses;

(c) Severance pay;

(d) Other special payments received because of employment;

(e) Net earnings from self-employment (WAC ((~~388-475-0840~~)) 182-512-0840 describes ((~~net~~)) earnings exclusions);

(f) Self-employment income of tribal members unless the income is specifically exempted by treaty;

(g) Payments for services performed in a sheltered workshop or work activities center;

(h) Royalties earned by ((~~an individual~~)) a person in connection with any publication of his/her work and any honoraria received for services rendered; ((~~or~~)) and

(i) In-kind payments made in lieu of cash wages, including the value of food, clothing or shelter.

(4) Unearned income is all income that is not earned income. Some types of unearned income are:

(a) Annuities, pensions, and other periodic payments;

(b) Alimony and support payments;

(c) Dividends and interest;

(d) Royalties (except for royalties earned by ((~~an individual~~)) a person in connection with any publication of his/her work and any honoraria received for services rendered which would be earned income);

(e) Capital gains;

(f) Rents;

(g) Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;

(h) Gifts;

(i) Inheritances;

(j) Prizes and awards; ((~~or~~)) and

(k) Amounts received by tribal members from gaming revenues.

(5) Some items which may be withheld from income, but which the ((~~department~~)) agency considers as received income are:

(a) Federal, state, or local income taxes;

(b) Health or life insurance premiums;

(c) SMI premiums;

(d) Union dues;

(e) Penalty deductions for failure to report changes;

(f) Loan payments;

(g) Garnishments;

(h) Child support payments, court ordered or voluntary (WAC ((~~388-475-0900~~)) 182-512-0900 has an exception for deemors);

(i) Service fees charged on interest-bearing checking accounts;

(j) Inheritance taxes; and

(k) Guardianship fees if presence of a guardian is not a requirement for receiving the income.

(6) Countable income, for the purposes of this chapter, means all income that is available to the ((~~individual~~)) person:

(a) If it cannot be excluded((~~,~~)); and

(b) After deducting all allowable disregards and deductions.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0650 SSI-related medical—Available income. (1) Income is considered available to a ((~~client~~)) person at the earliest of when it is:

(a) Received((~~,~~)); or

(b) Credited to ((~~an individual's~~)) a person's account((~~,~~)); or

(c) Set aside for his or her use((~~,~~)); or

(d) Can be used to meet the ((~~client's~~)) person's needs for food, clothing or shelter.

(2) Anticipated nonrecurring lump sum payments are treated as income in the month received, with the exception of those listed in WAC ((~~388-475-0700~~)) 182-512-0700(5), and any remainder is considered a resource in the following month.

(3) Reoccurring income is considered available in the month of normal receipt, even if the financial institution posts it before or after the month of normal receipt.

(4) In-kind income received from anyone other than a legally responsible relative is considered available income only if it is earned income.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0700 SSI-related medical—Income eligibility. (1) In order to be eligible, ((~~an individual~~)) a person is required to do everything necessary to obtain any income to which he or she is entitled including (but not limited to):

(a) Annuities((~~,~~));

(b) Pensions((~~,~~));

(c) Unemployment compensation((~~,~~));

(d) Retirement((~~,~~)); and

(e) Disability benefits; even if their receipt makes the ((~~individual~~)) person ineligible for agency services, unless the ((~~individual~~)) person can provide evidence showing good reason for not obtaining the benefits.

(2) The agency ((~~or its authorized representative~~)) does not count this income until the ((~~individual~~)) person begins to receive it. Income is budgeted prospectively for all ((~~medical~~)) Washington apple health (WAH) health care programs.

(3) Anticipated nonrecurring lump sum payments other than retroactive SSI/SSDI payments are considered income in the month received, subject to reporting requirements in WAC ((~~388-418-0007(4)~~)) 182-504-0110. Any unspent portion is considered a resource the first of the following month.

(4) The agency ((~~or its authorized representative~~)) follows income and resource methodologies of the supplemental security income (SSI) program defined in federal law when determining eligibility for WAH SSI-related medical or medicare savings programs unless the agency adopts rules that are less restrictive than those of the SSI program.

(5) Exceptions to the SSI income methodology:

(a) Lump sum payments from a retroactive SSDI benefit, when reduced by the amount of SSI received during the period covered by the payment, are not counted as income;

(b) Unspent retroactive lump sum money from SSI or SSDI is excluded as a resource for nine months following receipt of the lump sum; and

(c) Both the principal and interest portions of payments from a sales contract, that meet the definition in WAC 182-512-0350(10), are unearned income.

(6) To be eligible for WAH categorically needy (CN) SSI-related ((~~medical~~)) health care coverage, ((~~an individual's~~)) a person's countable income cannot exceed the WAH CN program standard described in:

(a) WAC 182-512-0010 for noninstitutional ((~~medical~~)) WAH coverage unless living in an alternate living facility; or

(b) WAC ((~~388-513-1305~~)) 182-513-1305(2) for noninstitutional WAH CN ((~~benefits~~)) coverage while living in an alternate living facility; or

(c) WAC ((~~388-513-1315~~)) 182-513-1315 for institutional and waiver services ((~~medical benefits~~)) coverage.

(7) To be eligible for SSI-related ((~~medical~~)) health care coverage provided under the WAH medically needy (MN) program, ((~~an individual~~)) a person must:

(a) Have countable income at or below the effective WAH MN program standard as described in WAC 182-519-0050; ((~~or~~))

(b) Satisfy spenddown requirements described in WAC 182-519-0110;

(c) Meet the requirements for noninstitutional WAH MN ((~~benefits~~)) coverage while living in an alternate living facility (ALF). See WAC ((~~388-513-1305~~)) 182-513-1305(3); or

(d) Meet eligibility for institutional WAH MN ((~~benefits~~)) coverage described in WAC ((~~388-513-1315~~)) 182-513-1315.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0750 SSI-related medical—Countable unearned income. The ((~~department~~)) agency counts unearned income for Washington apple health (WAH) SSI-related medical programs as follows:

(1) The total amount of income benefits to which a ((~~client~~)) person is entitled is treated as available unearned income even when the benefits are:

(a) Reduced through the withholding of a portion of the benefit amount to repay a legal obligation;

(b) Garnished to repay a debt, other legal obligation, or make any other payment such as payment of medicare premiums.

(2) Payments received on a loan:

(a) Interest paid on the loan amount is considered unearned income; and

(b) Payments on the loan principal are not considered income. However, any amounts retained on the first of the following month are considered a resource.

(3) Money borrowed by a person, which must be repaid, is not considered income. It is considered a loan. If the money received does not need to be repaid, it is considered a gift.

(4) Rental income received for the use of real or personal property, such as land, housing or machinery is considered unearned income. The countable portion of rental income received is the amount left after deducting necessary expenses of managing and maintaining the property paid in that month or carried over from a previous month. Necessary expenses are those such as:

(a) Advertising for tenants;

(b) Property taxes;

(c) Property insurance;

(d) Repairs and maintenance on the property; and

(e) Interest and escrow portions of a mortgage.

NOTE: When a ((~~client~~)) person is in the business of renting properties and actively works the business (over twenty hours per week), the income is counted as earned income.

NEW SECTION

WAC 182-512-0760 SSI-related medical—Education assistance. (1) The agency does not count:

(a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV – HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV – HEA and BIA educational assistance include, but are not limited to:

(i) College work study (federal and state);

(ii) Pell grants; and

(iii) BIA higher education grants.

(b) Educational assistance in the form of grants, loans or work study made available under any program administered by the department of education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:

(i) Christa McAuliffe Fellowship Program;

(ii) Jacob K. Javits Fellowship Program; and

(iii) Library Career Training Program.

(2) For assistance in the form of grants, loans or work study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-391:

(a) If the person attends school half-time or more, the agency subtracts the following expenses:

(i) Tuition;

(ii) Fees;

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(iv) Books;

(v) Supplies;

(vi) Transportation;

(vii) Dependent care; and

(viii) Miscellaneous personal expenses.

(b) If the person attends school less than half-time, the agency subtracts the following expenses:

(i) Tuition;

(ii) Fees; and

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(3) WorkFirst work-study income is not counted.

(4) Income received from work study program that is not excluded under subsection (1) of this section is counted as earned income.

(5) If the person receives Veteran's Administration Educational Assistance:

(a) All applicable attendance costs are subtracted; and

(b) The remaining income is budgeted as unearned income.

NEW SECTION

WAC 182-512-0770 SSI-related medical—Native American benefits and payments. (1) The agency counts per capita distributions made to a tribal member from gaming moneys.

(2) Examples of income the agency does not count include, but are not limited to:

(a) Up to two thousand dollars per person per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per person per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by P.L. 101-41 made to a Puyallup tribe member.

(3) The agency excludes other Native American payments and benefits that are excluded by federal law (see 20 C.F.R. 416, Appendix to Subpart K at http://www.socialsecurity.gov/OP_Home/cfr20/416/416-app-k.htm). Examples include, but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-450;

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503; and

(d) The receipt of money by a member of a federally recognized tribe from exercising Native American treaty rights or extraction of protected resources, such as fishing, shellfishing, or selling timber, is considered conversion of an exempt resource during the month of receipt and is not counted as income. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

NEW SECTION

WAC 182-512-0780 SSI-related medical—Employment and training programs. (1) The agency excludes income received from the following programs:

(a) Payments issued under the Workforce Investment Act (WIA);

(b) Payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program;

(c) Payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps VISTA, University Year for Action, and Urban Crime Prevention Program; and

(d) All payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(i) Retired Senior Volunteer Program (RSVP);

(ii) Foster Grandparents Program; and

(iii) Senior Companion Program.

(2) The agency counts training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(3) The agency excludes support service payments received by or made on behalf of WorkFirst recipients.

NEW SECTION

WAC 182-512-0785 SSI-related medical—Effect of a sponsor's income. (1) The following definitions apply to this section:

(a) **"Sponsor"** means a person who agreed to meet the needs of a sponsored immigrant by signing a United States Citizenship and Immigration Services Affidavit of Support form I-864 or I-864A. This includes a sponsor's spouse if the spouse signed the affidavit of support.

(b) **"Sponsored immigrant"** means a person who must have a sponsor under the Immigration and Nationality Act (INA) to be admitted into the United States for residence.

(c) **"Deeming"** means the agency counts a part of the sponsor's income and resources as available to the sponsored immigrant.

(d) **"Exempt"** means the person meets one of the conditions of WAC 182-512-0190.

(2) If the person is a sponsored immigrant and is not exempt from deeming, the person must provide the following information to be eligible for Washington apple health (WAH) SSI-related coverage even if the person is not receiving support from their sponsor:

(a) The name and address of the sponsor;

(b) The income and resources of the sponsor; and

(c) Any additional information needed for the agency to determine if:

(i) Income must be deemed to the person's medical assistance unit (MAU); and

(ii) The amount of income that must be deemed to the MAU.

(3) If the person is not eligible for coverage because the agency does not have the information needed regarding the sponsor, eligibility for other unsponsored household members applying for coverage is not delayed. Although the sponsored immigrant may not be eligible for coverage, the following is counted when determining the eligibility of other household members:

(a) All earned or unearned income of the sponsored immigrant that is not excluded under chapter 182-512 WAC; and

(b) All deductions the sponsored immigrant would be eligible for under chapter 182-512 WAC.

(4) If the person refuses to provide the agency with the information needed regarding the sponsor, the other adult

members in the MAU must provide the information. If the same person sponsored everyone in the MAU, the entire MAU is not eligible for WAH coverage until someone provides the information that is needed.

NEW SECTION

WAC 182-512-0790 SSI-related medical—Exemption from sponsor deeming. (1) A person who meets any of the following conditions is permanently exempt from deeming and the agency does not count the sponsor's income or resources when determining eligibility for Washington apple health (WAH) SSI-related coverage:

(a) The Immigration and Nationality Act (INA) does not require the person to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with U.S. Citizenship and Immigration Services (USCIS):

(i) Refugee;

(ii) Parolee admitted under Section 212(d)(5) of the Immigration and Nationality Act (INA);

(iii) Asylee;

(iv) Cuban/Haitian entrant under Section 202 of the Immigration Reform and Control Act of 1986 (IRCA);

(v) Amerasians admitted with an I-551 admission code of AM1, AM2, AM3, AM6, AM7, or AM8; and

(vi) Special immigrant from Iraq or Afghanistan.

(b) The person meets the blindness or disability requirements described in WAC 182-512-0050(1);

(c) The person was sponsored by an organization or group as opposed to another person;

(d) The person is a nonqualified or undocumented alien as defined in WAC 182-503-0530 (3) and (4);

(e) The person has worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. The agency does not count a quarter of work toward this requirement if the person working received TANF, basic food, SSI, CHIP, or nonemergency medicaid coverage. A quarter of work earned by the following people is counted toward the forty qualifying quarters:

(i) The person;

(ii) The person's parents for the time they worked before the person turned eighteen years old (including the time they worked before the person's birth); and

(iii) The person's spouse if still married or if the spouse is deceased.

(f) The person has become a United States (U.S.) citizen;

(g) The sponsor is dead; or

(h) If USCIS or a court decides that the person, their child, or their parent was a victim of domestic violence from the person's sponsor and:

(i) The person no longer lives with the sponsor; and

(ii) Leaving the sponsor caused the need for coverage.

(2) A person is exempt from the deeming process while in the same assistance unit (AU) as the sponsor.

(3) If the person, their child, or their parent was a victim of domestic violence, the person is exempt from the deeming process for twelve months if:

(a) They no longer live with the person who committed the violence; and

(b) Leaving this person caused the need for health coverage.

(4) If the person's medical assistance unit (MAU) has income at or below one hundred thirty percent of the federal poverty level (FPL), the person is exempt from the deeming process for twelve months. This is called the "indigence exemption." A person may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (5) of this section. For this rule, the agency counts the following as income:

(a) Earned and unearned income received by any member of the MAU from any source; and

(b) The value of any noncash items of value such as free rent, commodities, goods, or services received from another person or organization.

(5) A person who chooses not to use the indigence exemption must provide verification of the sponsor's income and resources and will be subject to the deeming rules described in WAC 182-512-0795.

(6) For federally funded programs, if the person uses the indigence exemption, the agency is required by law to give the U.S. Attorney General the following information:

(a) The names of the sponsored people in the person's AU;

(b) That the person is exempt from deeming due to income;

(c) The sponsor's name; and

(d) The effective date that the twelve-month exemption began.

NEW SECTION

WAC 182-512-0795 SSI-related medical—Budgeting a sponsor's income. (1) The agency counts some of the income of a person's sponsor as unearned income to the medical assistance unit (MAU) if:

(a) The sponsor signed the U.S. Citizenship and Immigration Services (USCIS) Affidavit of Support form I-864 or I-864A; and

(b) The person is not exempt from the deeming process in WAC 182-512-0190.

(2) The agency determines the amount of income that must be deemed from the sponsor by taking the following steps:

(a) Add together all of the sponsor's earned and unearned income that is not excluded under WAC 182-512-0860;

(b) Add all of the spouse's earned and unearned income that is not excluded under WAC 182-512-0860;

(c) Subtract an allocation for the sponsor equal to the one-person federal benefit rate (FBR);

(d) Subtract an allocation for the sponsor's spouse as follows:

(i) If the spouse is also a cosponsor of the noncitizen, allow an allocation equal to the one-person FBR; or

(ii) If the spouse is not a cosponsor but lived in the same household as the sponsor, allow an allocation equal to one-half of the FBR.

(e) Subtract an allocation equal to one-half FBR for each dependent of the sponsor. The dependent's income is not subtracted from the sponsor's dependent's allocation; and

(f) The income remaining is deemed as unearned income to the noncitizen and is added to the noncitizen's own income.

(3) If the sponsor has sponsored other noncitizens, all of the sponsor's income is deemed to each person that they sponsored and is not divided between them.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0800 SSI-related medical—General income exclusions. The ((~~department~~)) agency excludes, or does not consider, the following when determining a ((~~client's~~)) person's eligibility for Washington apple health (WAH) SSI-related medical programs:

(1) The first twenty dollars per month of unearned income. If there is less than twenty dollars of unearned income in a month, the remainder is excluded from earned income in that month.

(a) The twenty-dollar limit is the same, whether applying it for a couple or for a single person.

(b) The disregard does not apply to income paid totally or partially by the federal government or a nongovernmental agency on the basis of an eligible person's needs.

(c) The twenty dollars disregard is applied after all exclusions have been taken from income.

(2) Income that is not reasonably anticipated or is received infrequently or irregularly, whether for a single person or each person in a couple when it is:

(a) Earned and does not exceed a total of thirty dollars per calendar quarter; or

(b) Unearned and does not exceed a total of sixty dollars per calendar quarter;

(c) An increase((~~s~~)) in a ((~~client's~~)) person's burial funds that were established on or after November 1, 1982, if the increase((~~s are~~)) is the result of:

(i) Interest earned on excluded burial funds; or

(ii) Appreciation in the value of an excluded burial arrangement that was left to accumulate and become part of separately identified burial funds.

(3) Essential expenses necessary for a ((~~client~~)) person to receive compensation (e.g., necessary legal fees in order to get a settlement)((~~;~~)).

(4) Receipts, which are not considered income, when they are for:

(a) Replacement or repair of an exempt resource;

(b) Prepayment or repayment of medical care paid by a health insurance policy or medical service program; or

(c) Payments made under a credit life or credit disability policy.

(5) The fee a guardian or representative payee charges as reimbursement for providing services, when such services are a requirement for the ((~~client~~)) person to receive payment of the income.

(6) Funds representing shared household costs.

(7) Crime victim's compensation.

(8) The value of a common transportation ticket, given as a gift, that is used for transportation and not converted to cash.

(9) Gifts that are not for food, clothing or shelter, and gifts of home produce used for personal consumption.

(10) The ((~~department~~)) agency does not consider in-kind income received from someone other than a person legally responsible for the ((~~individual~~)) person unless it is earned. Therefore, the following in-kind payments are not counted when determining eligibility for WAH SSI-related medical programs((~~.~~)):

(a) In-kind payments for services paid by a ((~~client's~~)) person's employer if:

(i) The service is not provided in the course of an employer's trade or business; or

(ii) ((~~It~~)) The service is in the form of food ((~~and/or shelter~~)) that is((~~:~~

~~(A)~~)) on the employer's business premises((~~;~~

~~(B) For the employer's convenience; and~~

~~(C) If shelter, acceptance by the employee is a condition of employment~~)) and for the employer's convenience; or

(iii) The service is in the form of shelter that is on the employer's business premises, for the employer's convenience, and required to be accepted by the employee as a condition of employment.

(b) In-kind payments made to people in the following categories:

(i) Agricultural employees;

(ii) Domestic employees;

(iii) Members of the uniformed services; and

(iv) Persons who work from home to produce specific products for the employer from materials supplied by the employer.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0820 SSI-related medical—Child-related income exclusions and allocations. (1) For the purposes of Washington apple health (WAH) SSI-related medical eligibility determinations under chapter ((~~388-475~~)) 182-512 WAC, a child is defined as ((~~an individual~~)) a person who is:

(a) Unmarried;

(b) Living in the household of the SSI-related applicant;

(c) The natural, adopted or stepchild of the SSI-related applicant or the applicant's spouse;

(d) Not receiving a needs-based cash payment such as TANF or SSI; and

(e) ((~~Is~~)) Either:

(i) Age seventeen or younger; or

(ii) Age twenty-one or younger and meets the SSI-related definition of a student described in subsection (6) of this section.

(2) The ((~~department~~)) agency allows an allocation for the support of a child when determining the countable income of an SSI-related applicant. The allocation is calculated as follows:

(a) For WAH categorically needy (CN) ((~~medical~~)) health care coverage, the allocation is deducted from the countable income of a nonapplying spouse before determining the amount of the nonapplying spouse's income to be deemed to the SSI-related applicant. Allocations to children are not deducted from the income of an unmarried SSI-related applicant.

(b) For WAH medically needy (MN) medical coverage, the allocation is first deducted from the income of the nonapplying spouse as described in subsection (2)(a) of this section when the SSI-related applicant is married, and from the income of the applicant when the applicant is not married.

(3) The child's countable income, if any, is subtracted from the maximum child's allowance before determining the amount of allocation.

(4) Foster care payments received for a child who is not SSI-eligible and who is living in the household, placed there by a licensed, nonprofit or public child placement or child-care agency are excluded from income regardless of whether the person requesting or receiving SSI-related medical is the adult foster parent or the child who was placed.

(5) Adoption support payments, received by an adult for a child in the household that are designated for the child's needs, are excluded as income. Adoption support payments that are not specifically designated for the child's needs are not excluded and are considered unearned income to the adult.

(6) The ((~~department~~)) agency excludes the earned income of a person age twenty-one or younger if that person is a student. ((~~A student must meet one of the following criteria~~)) In order to allow the student earned income exclusion, a student must:

(a) Attend a school, college, or university a minimum of eight hours a week; or

(b) Pursue a vocational or technical training program designed to prepare the student for gainful employment a minimum of twelve hours per week; or

(c) Attend school or be home schooled in grades seven through twelve at least twelve hours per week.

(7) Any portion of a grant, scholarship, fellowship, or gift used for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income and not counted as a resource for nine months after the month of receipt.

(8) One-third of child support payments received for a child who is an applicant for WAH SSI-related medical is excluded from the child's income. Child support payments that are subject to the one-third deduction may be voluntary or court-ordered payments for current support or arrears.

(9) The one-third deduction described in subsection (8) of this section does not apply to child support payments received from an absent parent for a child living in the home when the parent(s) or their spouse is the applicant for SSI-related medical. Voluntary or court-ordered payments for current support or arrears are always considered the income of the child for whom they are intended and not income to the parent(s).

(10) The following gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, ((~~is~~)) are excluded ((~~as follows~~)):

(a) In-kind gifts that are not converted to cash; ((~~or~~)) and

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(11) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children are excluded from income. Any portion of a veteran's payment that is designed as the dependent's income is countable income to the dependent and not the applicant (assuming the applicant is not the dependent).

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0840 SSI-related medical—Work- and agency-related income exclusions. The ((~~department~~)) agency excludes the following when determining eligibility for Washington apple health (WAH) SSI-related medical programs:

(1) Work related expenses:

(a) That enable an SSI-related ((~~client~~)) person to work; or

(b) That allows a blind or disabled ((~~client~~)) person to work and that are directly related to the person's impairment.

(2) First sixty-five dollars plus one-half of the remainder of earned income. This is considered a work allowance/ incentive. This deduction does not apply to income already excluded.

(3) Any portion of self-employment income normally allowed as an income deduction by the Internal Revenue Service (IRS).

(4) Earned income of a person age twenty-one or younger if that person meets the definition of a student as defined in WAC ((~~388-475-0820~~)) 182-512-0820.

(5) Veteran's aid and attendance, housebound allowance, unusual/unreimbursed medical expenses (UME) paid by the VA to some disabled veterans, their spouses, widows or parents. For people receiving WAH long-term care services, see chapter ((~~388-513~~)) 182-513 WAC.

(6) Department of veterans affairs benefits designated for the veteran's dependent as long as the SSI-related applicant is not the dependent receiving the income. If an SSI-related applicant receives a dependent allowance based on the veteran's or veteran's survivor claim, the income is countable as long as it is not paid due to unusual medical expenses (UME).

(7) Payments provided in cash or in-kind, to an ineligible or nonapplying spouse, under any government program that provides social services provided to the ((~~client~~)) person, such as chore services or attendant care.

(8) SSA refunds for medicare buy-in premiums paid by the ((~~client~~)) person when the state also paid the premiums.

(9) Income that causes a ((~~client~~)) person to lose SSI eligibility, due solely to reduction in the SSP.

(10) Tax rebates or special payments excluded under other statutes.

(11) Any public agency refund of taxes paid on real property or on food.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The

Social Security Act and other federal statutes or state laws list income that the ((~~department~~)) agency excludes when determining eligibility for Washington apple health (WAH) SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for twelve months after the month of receipt;

(3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;

(4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h)(1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);

(5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;

(6) Certain cash or in-kind payments a ((~~client~~)) person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;

(8) Assistance based on need, including:

(a) Any federal SSI income or state supplement payment (SSP) based on financial need;

(b) Basic food ((~~stamps~~));

(c) ((~~GA-U~~)) State-funded cash assistance;

(d) CEAP;

(e) TANF; and

(f) Bureau of Indian Affairs (BIA) general assistance.

(9) Housing assistance from a federal program such as HUD if paid under:

(a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);

(b) National Housing Act (section 1701 et seq. of 12 U.S.C.);

(c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);

(d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.); ((~~or~~))

(e) Section 202(h) of the Housing Act of 1959; or

(f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations((~~,~~)).

(10) Energy assistance payments including:

(a) Those to prevent fuel cutoffs((~~,~~)); and

(b) Those to promote energy efficiency.

(11) Income from employment and training programs as specified in WAC ((~~388-450-0045~~)) 182-512-0780.

(12) Foster grandparents program;

(13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;

(14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035).

(15) Educational assistance as specified in WAC ((~~388-450-0035~~)) 182-512-0760.

(16) Up to two thousand dollars per year derived from ((~~an individual's~~)) a person's interest in Indian trust or restricted land.

(17) Native American benefits and payments as specified in WAC ((~~388-450-0040~~)) 182-512-0770 and other Native American payments excluded by federal statute. ((~~For a complete list of these payments, see 20 C.F.R. 416, Subpart K, Appendix, IV.~~))

(18) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;

(19) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

(20) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;

(21) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);

(22) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;

(23) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(24) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;

(25) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(26) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426; and

(27) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized ((~~individual~~)) person.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0880 SSI-related medical—Special income disregards. Portions of ((~~your~~)) a person's income the ((~~department~~)) agency otherwise counts are disregarded when determining eligibility for Washington apple health SSI-related medical programs.

(1) The ((~~department~~)) agency disregards the following for WAH SSI-related medical programs:

(a) The cost of living adjustment(s) (COLA) for a ((~~client~~)) person who:

(i) Is currently receiving a Social Security payment;

(ii) Was eligible for and received ((~~both SSA and~~)) an SSI/State Supplement payment((~~s~~)) (SSP) in the same month as the person was entitled to (but did not necessarily receive) a title II SSA benefit for at least one month since April, 1977; and

(iii) Would continue to receive SSI/SSP payments but for the COLA increase(s) to their SSA benefits. ((~~This is commonly known as the adjustment for "Pickle people."~~))

(b) Widow(er)'s benefits for a ((~~client~~)) person who:

(i) Was entitled to SSA title II (widow/widower's) benefits in December 1983;

(ii) Was at least fifty years old, but not yet sixty at that time;

(iii) Received title II benefits and SSI in January 1984;

(iv) Would continue to be eligible for SSI/SSP payments if the title II benefits were disregarded; and

(v) Filed an application for medicaid with the state by July 1, 1988.

(c) Widow, Widower or Surviving Divorced Spouse (title II) benefits for a ((~~client~~)) person who:

(i) Received SSI/SSP benefits the month prior to receipt of title II benefits;

(ii) Would continue to be eligible for SSI/SSP benefits if the title II benefits or the COLA(s) to those benefits were disregarded; and

(iii) Is not eligible for medicare Part A. This ((~~client~~)) person is considered an SSI recipient until becoming entitled to medicare Part A.

(2) A disabled adult child (DAC) who is ineligible for SSI/SSP solely due to receipt of either Social Security benefits as a disabled adult child of a person with a Social Security account or due to receipt of a COLA to the DAC benefits, may be income eligible for WAH categorically needy (CN ((~~medical~~))) health care coverage if disregarding the SSA DAC benefits and COLA brings countable income below the CN standards, and the ((~~client~~)) person:

(a) Is eighteen years of age or older;

(b) Remains related to the SSI program through disability or blindness;

(c) Lost SSI eligibility on or after July 1, 1988, due solely to the receipt of DAC benefits from SSA or a COLA to those benefits; and

(d) Meets the other WAH SSI-related CN medical requirements.

(3) ((~~Clients~~)) A person is eligible for WAH CN coverage if:

(a) In August 1972, the person received:

(i) Old age assistance (OAA);

(ii) Aid to blind (AB);

(iii) Aid to families with dependent children (AFDC); or

(iv) Aid to the permanently and totally disabled (APTD).

(b) The person was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(c) The person was ineligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(4) Persons who stop receiving an SSI cash payment due to earnings, but still meet all of the other SSI eligibility rules and have income below the higher limit established by the Social Security Act's Section 1619(b) are eligible for continued WAH CN medicaid.

(((~~4~~))) (5) TANF income methodology is used to determine countable income for children and pregnant women applying for WAH medically needy (MN) coverage unless the SSI methodology would be more beneficial to the ((~~client. For cases using~~)) person. Use TANF ((~~methodology, follow the family medical rules and allow the~~)) income methodologies and deduct:

(a) A fifty percent earned income disregard described in WAC 388-450-0170;

(b) Actual child care and dependent care expenses related to employment; and

(c) Child support actually paid.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0900 SSI-related medical—Deeming and allocation of income. The agency ((~~or its authorized representative~~)) considers income of financially responsible persons to determine if a portion of that income must be regarded as available to other household members.

(1) Deeming is the process of determining how much of another person's income is counted when determining Washington apple health (WAH) eligibility of an SSI-related applicant. When income is deemed to the SSI-related applicant from other household members, that income is considered the applicant's income. Income is deemed only:

(a) From a nonapplying spouse who lives with the SSI-related applicant; or

(b) From a parent(s) residing with an SSI-related applicant child.

(2) An allocation is an amount deducted from income counted in the eligibility determination and considered to be set aside for the support of a person other than the SSI-related applicant. When income is allocated to other household members from the SSI-related applicant(s) or from the applicant's spouse, that income is not counted as income of the SSI-related applicant.

(3) An SSI-related ((~~individual~~)) person applying for WAH categorically needy (CN) ((~~medical~~)) health care coverage must have countable income at or below the SSI categorically needy income level (CNIL) described in WAC 182-512-0010 unless the ((~~individual~~)) person is working and meets all requirements for the health care for workers with disabilities (HWD) program described in WAC 182-511-1000 through 182-511-1250.

(4) For WAH institutional or home and community based waiver programs, use rules described in WAC ((~~388-513-1315~~)) 182-513-1315.

(5) The agency ((~~or its authorized representative~~)) follows rules described in WAC 182-512-0600 through 182-512-0880 to determine the countable income of an SSI-related applicant or SSI-related couple.

(6) If countable income of the applicant exceeds the one-person SSI CNIL prior to considering the income of a nonapplying spouse or children, the applicant is not eligible for WAH CN ((~~medical~~)) health care coverage and the agency ((~~or its authorized representative~~)) determines eligibility for the WAH medically needy (MN) program. If the countable income does not exceed the SSI CNIL, see WAC 182-512-0920 to determine if income is to be deemed to the applicant from the nonapplying spouse.

(7) If countable income (after allowable deductions) of an SSI-related couple both applying for medical coverage

exceeds the two-person SSI CNIL, the couple is not eligible for WAH CN ((~~medical~~)) health care coverage and the agency ((~~or its authorized representative~~)) determines eligibility for the WAH medically needy (MN) program.

(8) For WAH CN ((~~medical~~)) health care coverage, allocations to children are deducted from the nonapplying spouse's unearned income, then from their earned income before income is deemed to the SSI-related applicant. See WAC 182-512-0820.

(9) For MN medical coverage, allocations to children are deducted from the income of the SSI-related applicant or SSI-related applicant couple. See subsection (10) of this section to determine the amount of the allocation.

(10) An SSI-related ((~~individual~~)) person or couple applying for WAH MN ((~~medical~~)) health care coverage is allowed an allocation to a nonapplying spouse, their SSI recipient spouse or their dependent child(ren) to reduce countable income before comparing income to the effective medically needy income level (MNIL) described in WAC 182-519-0050. The agency ((~~or its authorized representative~~)) allocates income:

(a) Up to the effective one-person MNIL to a nonapplying spouse or SSI recipient spouse minus the spouse's countable income; and

(b) Up to one-half of the federal benefit rate (FBR) to each dependent minus each dependent's countable income. See WAC 182-512-0820 for child exclusions.

(11) A portion of a nonapplying spouse's income may be deemed to the SSI-related applicant:

(a) See WAC 182-512-0920(5) to determine how much income is deemed from a nonapplying spouse to the SSI-related applicant when determining WAH CN eligibility; and

(b) See WAC 182-512-0920(10) to determine how much income is deemed from a nonapplying spouse to the SSI-related applicant when determining WAH MN eligibility.

(12) A portion of the income of an ineligible parent or parents is allocated to the needs of an SSI-related applicant child. See WAC 182-512-0940 (4) through (7) to determine how much income is allocated from ineligible parent(s).

(13) ((~~Only~~)) When income ((~~and resources actually contributed to an alien applicant~~)) must be deemed from ((~~their~~)) the sponsor ((~~are~~)) or sponsors of a noncitizen applicant or recipient, see WAC 182-512-0795 to determine the amount that must be counted as income((~~. For allocation of income from an alien sponsor, refer to WAC 388-450-0155~~)) of the noncitizen applicant or recipient.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0920 SSI-related medical—Deeming/ allocation of income from nonapplying spouse. The agency ((~~or its authorized representative~~)) considers the income of financially responsible persons to determine if a portion of that income is available to other household members.

(1) A portion of the income of a nonapplying spouse is considered available to meet the needs of ((~~an~~)) a Washington apple health (WAH) SSI-related applicant. A nonapplying spouse is defined as someone who is:

(a) Financially responsible for the SSI-related applicant as described in WAC 182-506-0010 and 182-512-0960. For WAH institutional and home and community based waiver programs, see WAC ((~~388-513-1315~~)) 182-513-1315;

(b) Living in the same household with the SSI-related applicant;

(c) Not receiving a needs based payment such as temporary assistance to needy families (TANF)((~~,~~)) or state-funded cash assistance (SFA); or

(d) Not related to SSI, or is not applying for ((~~medical assistance~~)) WAH coverage including spouses receiving SSI.

(2) An ineligible spouse is the spouse of an SSI cash recipient and is either not eligible for SSI for themselves or who has elected to not receive SSI cash so that their spouse may be eligible. An SSI-related applicant who is the ineligible spouse of an SSI cash recipient is not eligible for WAH categorically needy (CN) ((~~medical~~)) health care coverage and must be considered for ((~~medical~~)) health care coverage under the WAH medically needy (MN) program.

(3) When determining whether a nonapplying spouse's income is countable, the agency ((~~or its authorized representative~~)):

(a) Follows the income rules described in WAC 182-512-0600 through ((~~182-512-0750~~)) 182-512-0780;

(b) Excludes income described in WAC 182-512-0800 (2) through (10), and all income excluded under federal statute or state law as described in WAC 182-512-0860.

(c) Excludes work-related expenses described in WAC 182-512-0840, with the exception that the sixty-five dollars plus one half earned income deduction described in WAC 182-512-0840(2) does not apply;

(d) Deducts any court ordered child support which the nonapplying spouse pays for a child outside of the home (current support or arrears); and

(e) Deducts any applicable child-related income exclusions described in WAC 182-512-0820.

(4) The agency ((~~or its authorized representative~~)) allocates income of the nonapplying spouse to nonapplying children who reside in the home as described in WAC ((~~388-475-0820~~)) 182-512-0820. Allocations to children are deducted first from the nonapplying spouse's unearned income, then from their earned income.

(a) For WAH CN medical determinations, allocations to children are not allowed out of the income of the SSI-related applicant, only from the income of the nonapplying spouse.

(b) For WAH MN medical determinations, allocations to children are allowed from the income of the SSI-related applicant if the applicant is unmarried.

(5) For WAH SSI-related CN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to one-half of the federal benefit rate (FBR), no income is deemed to the applicant. Compare the applicant's countable income to the one-person SSI categorically needy income level (CNIL) described in WAC 182-512-0010. For health care for workers with disabilities

(HWD) applicants, compare to the one-person HWD standard described in WAC 182-505-0100 (1)(c).

(b) Greater than one-half of the FBR, then the entire nonapplying spouse's countable income is deemed to the applicant. Compare the applicant's income to the two-person SSI CNIL. For HWD applicants, compare to the two-person HWD standard described in WAC 182-505-0100 (1)(c).

(6) When income is not deemed to the SSI-related applicant from the nonapplying spouse per subsection (5)(a):

(a) Allow all allowable income deductions and exclusions as described in chapter 182-512 WAC to the SSI-related applicant's income; and

(b) Compare the net remaining income to the one-person SSI CNIL or the one-person HWD standard.

(7) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (5)(b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one twenty dollar general income exclusion to the combined amount.

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the sixty-five dollar plus one half of the remainder earned income deduction (described in WAC 182-512-0840(2)) to the combined amount.

(c) Add together the net unearned and net earned income amounts and compare the total to the two-person SSI CNIL described in WAC 182-512-0010 or the two-person HWD standard described in WAC 182-505-0100 (1)(c). If the income is equal to or below the applicable two-person standard, the applicant is eligible for WAH CN ((~~medical~~)) health care coverage.

(8) An SSI-related applicant under the age of sixty-five who is working at or below the substantial gainful activity (SGA) level but who is not eligible for WAH CN coverage under the regular WAH SSI-related program, may be considered for eligibility under the WAH MN program or under the HWD program. The SGA level is determined annually by the Social Security Administration and is posted at: https://secure.ssa.gov/apps10/poms.nsf/lnx/0410501015.

(9) If the SSI-related applicant's countable income is above the applicable SSI CNIL standard, the agency or its authorized representative considers eligibility under the WAH MN program or under the HWD program if the ((~~individual~~)) person is under the age of sixty-five and working. An SSI-related applicant who meets the following criteria is not eligible for WAH MN coverage and eligibility must be determined under HWD:

(a) ((~~A~~)) The applicant is blind or disabled ((~~individual who is~~)) and under the age of sixty-five;

(b) ((~~Who~~)) The applicant has earned income over the SGA level; and

(c) The applicant is not receiving a title II Social Security cash benefit based on blindness or disability.

(10) For SSI-related WAH MN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to the effective one-person MNIL described in WAC 182-519-0050, no income is deemed to the applicant and a portion of the applicant's countable income is allocated to the nonapplying spouse's income to raise it to the effective MNIL standard.

(b) Greater than the effective MNIL, then the amount in excess of the effective one-person MNIL is deemed to the applicant. Compare the applicant's income to the effective one-person MNIL.

(11) When income is not deemed to the SSI-related applicant from the nonapplying spouse per subsection (10)(a) of this section:

(a) Allocate income from the applicant to bring the income of the nonapplying spouse up to the effective one-person MNIL standard;

(b) Allow all allowable income deductions and exclusions as described in chapter 182-512 WAC to the SSI-related applicant's remaining income;

(c) Allow a deduction for medical insurance premium expenses (if applicable); and

(d) Compare the net countable income to the effective one-person MNIL.

(12) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (10)(b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one twenty dollar general income exclusion to the combined amount;

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the sixty-five dollar plus one half of the remainder earned income deduction (described in WAC 182-512-0840(2)) to the combined amount;

(c) Add together the net unearned and net earned income amounts;

(d) Allow a deduction for medical insurance premium expenses (if applicable) per WAC 182-519-0100(5); and

(e) Compare the net countable income to the effective one-person MNIL described in WAC 182-519-0050. If the income is:

(i) Equal to or below the effective one-person MNIL, the applicant is eligible for WAH MN ((~~medical~~)) health care coverage with no spenddown.

(ii) Greater than the effective MNIL, the applicant is only eligible for WAH MN ((~~medical~~)) health care coverage after meeting a spenddown liability as described in WAC 182-519-0110.

(13) The ineligible spouse of an SSI-cash recipient applying for WAH MN coverage is eligible to receive the deductions and allocations described in subsection (10)(a) of this section.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0940 SSI-related medical—Deeming income from an ineligible parent(s) to a child applying for

SSI-related medical. The agency ((~~or its authorized representative~~)) considers income of financially responsible persons to determine if a portion of that income must be regarded as available to other household members.

(1) A portion of the income of a parent(s) is considered available to the SSI-related applicant child when the child is age seventeen or younger and the parent(s) is:

(a) Financially responsible for the SSI-related child as described in WAC ((~~182-506-0010(2)~~)) 182-506-0015;

(b) The natural, adoptive, or step-parent of the child;

(c) Living in the same household with the child;

(d) Not receiving a needs-based payment such as TANF, SFA or SSI; and

(e) Not related to SSI or not applying for medical assistance.

(2) If an SSI-related applicant between the ages of eighteen to twenty-one lives with their parents, only consider the parent's income available to the applicant if it is actually contributed to the applicant. If income is not contributed, count only the applicant's own separate income.

(3) Income that is deemed to the child is considered as that child's income.

(4) When determining whether a parent's income is countable, the agency ((~~or its authorized representative follows~~)):

(a) Follows the income rules described in WAC 182-512-0600 through ((~~182-512-0750~~)) 182-512-0780; and

(b) Excludes income described in WAC 182-512-0800 and 182-512-0840, and all income excluded under a federal statute or state law as described in WAC 182-512-0860.

(5) When determining the amount of income to be deemed from a parent(s) to an SSI-related minor child for Washington apple health (WAH) categorically needy (CN) and medically needy (MN) coverage, the agency ((~~or its authorized representative~~)) reduces the parent(s) countable income in the following order:

(a) Court ordered child support paid out for a child not in the home;

(b) An amount equal to one half of the federal benefit rate (FBR) for each SSI-eligible sibling living in the household, minus any countable income of that child. See WAC ((~~388-478-0055~~)) 182-512-0010 for FBR amount;

(c) A twenty dollar general income exclusion;

(d) A deduction equal to sixty-five dollars plus one-half of the remainder from any remaining earned income of the parent(s);

(e) An amount equal to the one-person SSI CNIL for a single parent or the two-person SSI CNIL for a two parent household;

(f) Any income remaining after these deductions is considered countable income to the SSI-related child and is added to the child's own income. If there is more than one child applying for SSI-related ((~~medical~~)) health care coverage, the deemed parental income is divided equally between the applicant children; and

(g) The deductions described in this section are deducted first from unearned income then from earned income unless they are specific to earned income.

(6) The SSI-related applicant child is also allowed all applicable income exclusions and disregards described in chapter ((~~182-475~~)) 182-512 WAC from their own income. After determining the child's nonexcluded income, the agency ((~~or its authorized representative~~)):

(a) Allows the twenty dollar general income exclusion from any unearned income;

(b) Deducts sixty-five dollars plus one half of the remainder from any earned income which has not already been excluded under the student earned income exclusion (see WAC 182-512-0820)((~~.~~)); and

(c) Adds the child's countable income to the amount deemed from their parent(s). If the combination of the child's countable income plus deemed parental income is equal to or less than the SSI CNIL, the child is eligible for SSI-related WAH CN ((~~medical~~)) health care coverage.

(7) If the combination of the child's countable income plus deemed parental income is greater than the SSI CNIL, the agency ((~~or its authorized representative~~)) considers the child for SSI-related WAH medically needy (MN) coverage. Any amount exceeding the effective medically needy income level (MNIL) is used to calculate the amount of the child's spenddown liability as described in WAC 182-519-0110. See WAC 182-519-0050 for the current MNIL standards.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0960 SSI-related medical—Allocating income—How the ((~~department~~)) agency considers income and resources when determining eligibility for ((~~an individual~~)) a person applying for noninstitutional medicaid when another household member is receiving institutional medicaid. (1) The ((~~department~~)) agency follows rules described in WAC ((~~388-513-1315~~)) 182-513-1315 for ((~~an individual~~)) a person residing in a medical institution, approved for a home and community based waiver, or approved for the Washington apple health (WAH) institutional hospice program. The rules in this section describe how the ((~~department~~)) agency considers household income and resources when the household contains both institutional and noninstitutionalized household members.

(2) An institutionalized ((~~individual~~)) person (adult or child) who is not SSI-related may be considered under the long-term care for families and children programs described in WAC ((~~388-505-0230~~)) 182-514-0230 through ((~~388-505-0265~~)) 182-514-0265.

(3) The ((~~department~~)) agency considers the income and resources of spouses as available to each other through the end of the month in which the spouses stopped living together. See WAC ((~~388-513-1330~~)) 182-513-1330 and ((~~388-513-1350~~)) 182-513-1350 when a spouse is institutionalized.

(4) The ((~~department~~)) agency considers income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a boarding home (assisted living, enhanced adult residential center, adult residential center), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disabilities-group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(5) The ((~~department~~)) agency considers income and resources jointly when both spouses are placed in a boarding home, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

(6) When determining SSI-related WAH categorically needy (CN) or medically needy (MN) eligibility for a community spouse applying for ((~~medical~~)) health care coverage, the ((~~department~~)) agency counts:

(a) The separate income of the community spouse; plus

(b) One half of any community income received by the community spouse and the institutionalized spouse; plus

(c) Any amount allocated to the community spouse from the institutionalized spouse. The terms "community spouse" and "institutional spouse" are defined in WAC ((~~388-513-1301~~)) 182-513-1301.

(7) For the purposes of determining the countable income of a community spouse applying for ((~~medical~~)) health care coverage as described in subsection (6) ((~~above~~)) of this section, it does not matter whether the spouses reside together or not. Income that is allocated and actually available to a community spouse is considered that person's income.

(8) For the purposes of determining the countable income of a community spouse or children applying for ((~~medical~~)) health care coverage under modified adjusted gross income (MAGI)-based family, pregnancy or children's ((~~medical~~)) WAH programs, the ((~~department~~)) agency uses the following rules to determine if the income of the institutionalized person is considered in the eligibility calculation:

(a) When the institutionalized spouse or parent lives in the same home with the community spouse and/or children, their income is counted in the determination of household income following the rules for the medical program that is being considered.

(b) When the institutionalized spouse or parent does not live in the same home as the spouse and/or children, only income that is allocated and available to the household is counted.

(9) When determining the countable income of a community spouse applying for ((~~medical~~)) health care coverage under the WAH MN program, the ((~~department~~)) agency allocates income from the community spouse to the institutionalized spouse in an amount up to the one-person effective medically needy income level (MNIL) less the institutionalized spouse's income, when:

(a) The community spouse is living in the same household as the institutionalized spouse; ((~~and~~))

(b) The institutionalized spouse is receiving home and community-based waiver or institutional hospice services described in WAC ((~~388-515-1505~~)) 182-515-1505; and

(c) The institutionalized spouse has gross income of less than the MNIL.

(10) See WAC ((~~388-408-0055~~)) 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related persons. A separate medical assistance unit is always established for ((~~individuals~~)) persons who meet institutional status described in WAC ((~~388-513-1320~~)) 182-513-1320.