WSR 14-19-054
PERMANENT RULES
NORTHWEST CLEAN AIR AGENCY

[Filed September 11, 2014, 3:57 p.m., effective October 12, 2014]

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

Purpose: The goal of this rule making is four-fold. First is to streamline the publishing of fees for the outdoor burning, agricultural burning, and asbestos programs by removing the fee schedules from the regulation and publishing them as separate board approved documents. Second is to revise to better reflect current implementation and improve clarity for the outdoor burning, agricultural burning, and asbestos programs along with the fugitive dust requirements. Third is to newly adopt by reference two New Source Performance Standard (NSPS) and three National Emissions Standards for Hazardous Air Pollutants (NESHAP) along with two other federal programs. Fourth is to update the effectiveness dates under NWCAA 104 to ensure the most recent versions of the referenced regulations are adopted.

Citation of Existing Rules Affected by this Order: Amending Sections 104, 324, 502, 504, 550, and 570 of the Regulation of the NWCAA.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 14-15-031 on July 9, 2014.

Changes Other than Editing from Proposed to Adopted Version: Added a close parenthesis at the end of NWCAA 502.5 (B)(1) and (9).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 11, 2014.

Mark Buford
Assistant Director

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law that are in effect as of August 6, 2014 ((~~February 20, 2013~~)), which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedure Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except – -035, -036, -040(1), -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of August 6, 2014 ((~~February 20, 2013~~)) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards); 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, UUUUU, WWWWW, YYYYY, ZZZZZ, CCCCCC, EEEEEE, FFFFFF, GGGGGG, MMMMMM, NNNNNN, QQQQQQ, SSSSSS, TTTTTT, VVVVVV, ZZZZZZ, AAAAAAA, DDDDDDD, EEEEEEE, and HHHHHHH; 40 CFR Part 65 (Consolidated Federal Air Rule); and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014

AMENDATORY SECTION

SECTION 324 - FEES

324.1 Annual Registration Fees

(A) All registered air pollution sources shall pay the appropriate fee(s), which shall be established to cover the cost of administering the program, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. ((~~The NWCAA shall levy annual registration program fees as set forth in Section 324.1(C) to cover the costs of administering the registration program.~~))

(B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of ((~~twenty-five~~)) 25 percent (((~~25%~~))) of the registration fee for failure to pay the registration fee within ((~~thirty (30)~~)) 30 days after the due date. The late penalty shall be in addition to the registration fee.

(((~~(C) All registered air pollution sources shall pay the appropriate registration fee(s) as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.~~)))

324.2 New Source Review Fees

(A) New source review fees and fees for review of an application to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

(B) The applicable fee(s) shall be established to cover the direct and indirect costs of processing an application, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA.

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. Fees shall be due and payable upon receipt of invoice and shall be deemed delinquent if not fully paid within 30 days of invoice.

324.7 Order Fee. The applicable fee(s) shall be established to cover the direct and indirect costs of administering the program, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.8 Asbestos Program Fee. The applicable fee(s) shall be established to cover the direct and indirect costs of administering the program as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.9 Agricultural Burning Fee. The applicable fee(s) shall be established as described in RCW 70.94.6528 and WAC 173-430-041 as referenced in NWCAA 104.1 as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.10 Outdoor Burning Fee. The applicable fee(s) shall be established to cover the cost of administering the program as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.20 ((~~8~~)) Procedure for Adoption and Revision of Fee Schedules. A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule or proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedules or proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule or proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule or proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 9, 2012, March 14, 2013, September 11, 2014

AMENDATORY SECTION

SECTION 502 - OUTDOOR BURNING

502.1 PURPOSE. This section establishes a program to implement the limited burning policy authorized by sections of the Washington Clean Air Act (chapter 70.94 RCW as referenced in NWCAA 104.1) pertaining to outdoor burning.

((~~The limited outdoor burning policy requires Ecology and other agencies to:~~

~~A. Reduce outdoor burning to the greatest extent practical, consistent with the laws and regulations of the State of Washington.~~

~~B. Establish a permit program for limited burning, including procedures by which outdoor burning may be conducted.~~

~~C. Foster and encourage the development of reasonable alternatives to outdoor burning.~~))

502.2 APPLICABILITY.

(A)((~~.~~)) This section specifically applies to:

(1)((~~.~~)) Residential burning.

(2)((~~.~~)) Land clearing burning.

(3)((~~.~~)) Recreational fires.

(4)((~~.~~)) Indian ceremonial fires.

(5)((~~.~~)) Weed abatement fires.

(6)((~~.~~)) Fire((~~-~~))fighting instruction fires.

(7)((~~.~~)) Rare and endangered plant regeneration fires.

(8)((~~.~~)) Storm or flood debris burning.

(9) Tumbleweed burning.

(10) ((~~9.~~)) Other outdoor burning.

(B)((~~.~~)) This section does not apply to:

(1)((~~.~~)) Agricultural burning (which is governed by chapter 173-430 WAC as referenced in NWCAA 104.1);

(2)((~~.~~)) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements); and

(3)((~~.~~)) Silvicultural burning (which is governed by chapter 332-24 WAC, the Washington state smoke management plan, and various laws including chapter 70.94 RCW as referenced in NWCAA 104.1).

502.3 DEFINITIONS. Unless a different meaning is clearly required by context, words and phrases used in this section shall have the following meanings:

((~~A.~~)) AGRICULTURAL BURNING – ((~~means outdoor burning~~)) Fires regulated under ((~~C~~))chapter 173-430 WAC as referenced in NWCAA 104.1, including, but not limited to, any incidental agricultural burning or agricultural burning for pest or disease control.

((~~B.~~)) AIR POLLUTION EPISODE – ((~~means a~~))A period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in ((~~C~~))chapter 173-435 WAC as referenced in NWCAA 104.1.

((((~~C. COMMERCIAL OUTDOOR BURNING – means outdoor burning conducted as part of any commercial or business operation.~~))

((~~D.~~)) CONSTRUCTION/DEMOLITION DEBRIS – ((~~means any~~)) All material manufactured for or resulting from the construction, renovation, or demolition of buildings, roads, and other man-made structures.

((~~E.~~)) FIRE((~~-~~))FIGHTING((~~ER~~)) INSTRUCTION FIRES – ((~~means f~~))Fires for instruction in methods of fire((~~-~~))fighting, including, but not limited to, training to fight structural fires, aircraft crash rescue fires, and forest fires.

((~~F.~~)) FIREWOOD – ((~~means b~~))Bare, untreated wood used as fuel in a solid fuel burning device, Indian ceremonial fire, or recreational fire.

((~~G.~~)) IMPAIRED AIR QUALITY – A first or second stage impaired air quality condition declared by Ecology or the NWCAA in accordance with WAC 173-433-140 as referenced in NWCAA 104.1. ((~~for purposes of outdoor burning, means a condition declared by Ecology or the NWCAA when meteorological conditions are conducive to an accumulation of air contaminants, concurrent with at least one of the following criteria (WAC 173-433-140):~~

~~1. Particulate that is ten microns and smaller in diameter (PM_{10}) at or above an ambient level of sixty micrograms per cubic meter measured on a 24-hour average (RCW 70.94.473); or~~

~~2. Carbon monoxide at or above an ambient level of eight parts of contaminant per million parts of air by volume (ppm) measured on an eight-hour average; or~~

~~3. Particulate that is two and one-half microns or smaller in diameter ($PM_{2.5}$) at or above an ambient level of 15 micrograms per cubic meter of air measured on a 24-hour average; or~~

~~4. Air quality that threatens to exceed other limits established by the NWCAA.~~))

((~~H.~~)) INDIAN CEREMONIAL FIRE – ((~~means f~~))Fires necessary for Native American ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

((~~I.~~)) LAND CLEARING BURNING – ((~~means o~~))Outdoor burning of trees, stumps, shrubbery or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused). ((~~[RCW 70.94.6526].~~))

((~~J.~~)) NATURAL VEGETATION – ((~~means u~~))Unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood.

((~~K.~~)) NONATTAINMENT AREA – ((~~means a~~))A clearly delineated geographic area designated by the Environmental Protection Agency at 40 CFR Part 81 as exceeding (or that contributes to ambient air quality in a nearby area that exceeds) a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment. ((~~clearly delineated geographic area which has been designated by the Environmental Protection Agency because it does not meet (or it contributes to ambient air quality in a nearby area that does not meet) a national ambient air quality standard or standards for one or more of the criteria pollutants, which include carbon monoxide, particulate matter (PM_{10} and $PM_{2.5}$), sulfur dioxide, nitrogen dioxide, lead, and ozone.~~))

((~~L.~~)) NONURBAN AREAS – ((~~means u~~))Unincorporated areas within a county that are not designated as an urban growth area.

((~~M.~~)) NUISANCE – ((~~f~~))For purposes of outdoor burning, ((~~means~~)) an emission of smoke or any other air contaminant ((~~emission~~)) from an outdoor fire that unreasonably interferes with the use and enjoyment of the property upon which it is deposited.

((~~N.~~)) OTHER OUTDOOR BURNING – ((~~means o~~))Outdoor burning other than ((~~agricultural burning, silvicultural burning,~~)) residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement

fires, fire((-))fighting instruction fires, rare and endangered plant regeneration fire, Indian ceremonial fires, and recreational fires. It includes, but is not limited to, any outdoor burning necessary to protect public health and safety.

((O.)) OUTDOOR BURNING – ((means t))The combustion of any material in an open fire or in an outdoor container((, other than an incinerator, furnace, or other combustion device approved in advance by the NWCAA,)) without providing for the control of combustion or the control of emissions from the combustion. Outdoor burning means all types of outdoor burning except agricultural burning, burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements), and silvicultural burning.

((P.)) PERMITTING AGENCY – ((means t))The agency responsible for issuing permits for a particular type of outdoor burning (including adopting a general permit) and/or enforcing all requirements of this section unless another agency agrees to be responsible for certain enforcement activities in accordance with WAC 173-425-060 (1)(a) and (6) as referenced in NWCAA 104.1.

((Q.)) POLLUTANTS EMITTED BY OUTDOOR BURNING – ((means e))Carbon monoxide, carbon dioxide, particulate matter, sulfur dioxide, nitrogen oxides, lead, and various volatile organic compounds and toxic substances.

((R.)) RARE AND ENDANGERED PLANT REGENERATION FIRES – ((means f))Fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in chapter 79.70 RCW.

((S.)) REASONABLE ALTERNATIVE - ((means a))A method for disposing of organic refuse (such as natural vegetation) that is available, reasonably economical, and less harmful to the environment than burning, including, but not limited to, waste reduction, recycling, energy recovery or incineration, and landfill disposal.

((T.)) RECREATIONAL FIRE – ((means e))Cooking fires, campfires, and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or ceremonial purposes. Fires used for debris disposal purposes are not considered recreational fires.

((U.)) RESIDENTIAL BURNING – ((means t))The outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on ((the maintained area of residential property (i.e.)) lands immediately adjacent and in close proximity to a human dwelling((,)) and burned on such lands by a ((the property owner and/or any other)) responsible person.

((V.)) RESPONSIBLE PERSON – ((means a))Any of the following:

(1) Any person who has applied for and received a permit for outdoor burning, or

(2) ((a))Any person allowing, igniting or attending to an outdoor fire, or

(3) ((a))Any person who owns or controls property on which an outdoor fire occurs.

((W.)) SILVICULTURAL BURNING – ((means outdoor burning)) Fires relating to the following activities for the protection of life or property and/or the public health, safety, and welfare:

(1) Abating a forest fire hazard;

(2) Prevention of a forest fire hazard;

(3) Instruction of public officials in methods of forest firefighting;

(4) Any silvicultural operation to improve the forest lands of the state; and

(5) Silvicultural burning used to improve or maintain fire-dependent ecosystems for rare plants or animals within the state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. ((on any unimproved land the Department of Natural Resources protects pursuant to RCW 70.94.030(20), RCW 70.94.6534, RCW 70.94.6540 and pursuant to Chapter 76.04 RCW.))

((X.)) STORM OR FLOOD DEBRIS BURNING – ((means f))Fires consisting of natural vegetation deposited on lands by storms or floods that have occurred in((, within)) the previous two years and resulted in((, in which)) an emergency being ((was)) declared or proclaimed in the area by the city, county, or state government and burned on such lands by ((the property owner or)) a responsible person. ((his or her designee.))

((Y.)) TUMBLEWEED BURNING – ((means o))Outdoor burning to dispose of dry plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off((,)) and rolled about((,)) by the wind.

((Z.)) URBAN GROWTH AREA – ((means a)) Land, generally including and associated with an incorporated city, designated by a county for urban growth under ((An area defined by)) RCW 36.70A.030.

((AA.)) WEED ABATEMENT FIRES – ((means any o))Outdoor burning to dispose of weeds that is not regulated under chapter 173-430 WAC as referenced in NWCAA 104.1, the Agricultural Burning rule.

502.4 PROHIBITIONS AND RESTRICTIONS APPLYING TO ALL OUTDOOR BURNING. The following general requirements apply to all outdoor burning regulated by this section, including any outdoor burning allowed without a permit, unless a specific exception is stated in this section. A fire protection agency, county, or conservation district may enforce its own controls that are stricter than those set forth in this section.

(A)((.)) No person may cause or allow an outdoor fire in an area where the type of burning involved is prohibited under NWCAA 502.6 ((WAC 173-425-040)), or where it requires a permit under NWCAA 502.5(B) ((WAC 173-425-060(2))), unless a permit has been issued and is in effect.

((B. A fire protection agency, county, or conservation district may enforce its own controls that are stricter than those set forth in this section.))

(B) ((C.)) PROHIBITED MATERIALS. It shall be unlawful for any person to cause or allow any outdoor fire containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned((. E))except as follows ((when authorized by the NWCAA)):

(1)((.)) Aircraft crash rescue training fires approved and conducted in compliance with RCW 70.94.6528 as refer-

enced in NWCAA 104.1 may contain uncontaminated petroleum products. ((~~[RCW 70.94.6528]~~))

(2)((~~.~~)) ((~~O~~)) Ecology or the NWCAA may allow the limited burning of prohibited materials for other fire((~~-~~))fighting instruction fires, including those that are exempt from permits under NWCAA 502.5 (B)(6) ((~~WAC 173-425-060 (2)(f), and~~)).

(3) ((~~o~~))Other outdoor burning necessary to protect public health and safety ((~~[RCW 70.94.6528], containing limited prohibited materials, may be allowed by Ecology or the NWCAA~~)).

((~~3. Diseased animals and other infested material when ordered by a duly authorized health officer, as required, to keep the infestation from spreading.~~

~~4. Dangerous material when ordered by a fire protection agency to dispose of materials presenting danger to life, property, or public welfare may be burned, if no approved practical alternative method of disposal is available.~~))

(C) ((~~D.~~)) HAULED MATERIAL.

(1) No outdoor fire may contain material (other than firewood) that has been hauled from an area where outdoor burning of the material is prohibited.

(2) ((~~1.~~)) Any outdoor burning of material hauled from areas where outdoor burning of the material is allowed requires an appropriate permit. ((~~2.~~)) Any property used for this((~~e~~)) purpose ((~~of outdoor burning, where outdoor burning of the material is allowed~~)) on an on-going basis((~~,~~)) must be:

(a)((~~.~~)) ((~~Be l~~))Limited to the types of burning listed in WAC 173-351-200 (5)(b) as referenced in NWCAA 104.1 (criteria for municipal solid waste landfills), and

(b)((~~.~~)) Approved in accordance with other laws, including ((~~WAC~~)) chapter 173-304 WAC as referenced in NWCAA 104.1 (minimum functional standards for solid waste handling) and ((~~WAC~~)) chapter 173-400 WAC as referenced in NWCAA 104.1 (general regulations for air pollution sources). ((~~[RCW 70.94.6524]~~))

(D) ((~~E.~~)) CURTAILMENTS. During episodes or periods of impaired air quality, ((~~the~~)) a responsible person ((~~responsible~~)) for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(1)((~~.~~)) No outdoor fire shall be ignited in a geographical area where:

(a)((~~.~~)) ((~~Where~~)) Ecology has declared an air pollution episode; (((~~RCW 70.94.6512 and 70.94.6516~~))) ((~~or~~))

(b)((~~.~~)) ((~~Where~~)) Ecology or the NWCAA has declared an impaired air quality condition for the county; or ((~~where the air quality has been identified.~~))

(c)((~~.~~)) ((~~Where t~~))The appropriate fire protection authority has declared a fire danger burn ban, unless the NWCAA grants an exception.

(2)((~~.~~)) ((~~The~~)) A responsible person ((~~responsible~~)) for an outdoor fire shall ((~~must~~)) extinguish the fire when an air pollution episode, ((~~or~~)) an impaired air quality condition, or fire danger burn ban that applies to the burning((~~,~~)) is declared.

(a) ((~~3.~~)) Smoke visible from all types of outdoor burning, except land clearing burning, after a time period of three hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall ((~~will~~)) constitute prima facie evidence of unlawful outdoor burning.

(b) ((~~4.~~)) Smoke visible from land clearing burning after a time period of eight hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall((~~, will~~)) constitute prima facie evidence of unlawful outdoor burning.

(E) ((~~F.~~)) UNLAWFUL OUTDOOR BURNING/NUISANCE.((~~:~~)) It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

((~~1. Any person affected by outdoor burning may file a complaint with the permitting agency or other designated enforcing agency.~~

~~2. Any agency responding to an outdoor burning complaint should attempt to determine if the burning on any particular property is unlawful.~~

~~3. Any person responsible for such unlawful outdoor burning must immediately extinguish the fire.~~))

(F) ((~~G.~~)) BURNING IN OUTDOOR CONTAINERS. Outdoor containers (such as burn barrels and other wood waste incinerators not regulated under NWCAA Section 458 ((~~WAC 173-400-070(1)~~)), used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 ((~~one-half~~)) inch, and they may only be used in compliance with this section.

(G) ((~~H.~~)) OTHER GENERAL REQUIREMENTS.

(1)((~~.~~)) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(2)((~~.~~)) No fires are to be within 50 ((~~fifty~~)) feet of structures.

(3)((~~.~~)) Permission from a landowner((~~,~~)) or owner's designated representative((~~,~~)) must be obtained before starting an outdoor fire.

502.5 OUTDOOR BURNING PERMIT PROGRAM/REQUIREMENTS.

(A)((~~.~~)) PERMIT PROGRAM. ((~~General Requirements.~~))

(1)((~~.~~)) The NWCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning.

(2)((~~.~~)) The NWCAA may enter into agreements with any capable agencies to identify the permitting agencies and enforcing agencies for each type of burning and determine the type of permit appropriate for each where a permit is required.

(3)((~~.~~)) Permitting agencies may use a verbal, electronic, written, or general permit((~~s~~)) established by rule for any type of outdoor burning that requires a permit((~~: Provided that a written permit should be used, where feasible, for certain types of burning~~)).

(4)((-)) A written permit should be used, where feasible, for land clearing burning, storm or flood debris burning in areas where residential burning and land clearing burning are prohibited under NWCAA 502.6 (A), (B), or (C), ((~~or other outdoor burning has been banned under WAC 173-425-040 (1), (2), or (3)~~)) and other outdoor burning (except any other outdoor burning necessary to protect public health and safety).

(5) Any person having an outstanding penalty obligation to the NWCAA as a result of a violation of Section 502, except under appeal to the Pollution Control Hearings Board (PCHB) or other judicial body, shall be denied additional outdoor burning permits until the remaining balance is paid.

((~~6. Permits issued under section 502.5 shall provide that:~~

~~a. Prohibited material shall not be burned.~~

~~b. Outdoor burning shall not be conducted during a period of impaired air quality.~~

~~c. No reasonable alternative is available.~~

~~d. No outdoor burning shall be conducted in areas that exceed federal or state ambient air quality standards for carbon monoxide and/or PM_{10}. Such areas shall be defined as nonattainment areas for these pollutants.~~

~~e. Failure to abide by conditions of an outdoor burning permit shall be unlawful.~~

~~f. The rule for a general permit must establish periods of time when any burning under the permit must occur and must include all appropriate conditions for burning such as requirements for good combustion and restricting burning to specific weather conditions.~~))

(B)((-)) TYPES OF BURNING THAT REQUIRE A PERMIT. Except as otherwise stated, a permit is required for the following types of outdoor burning ((~~in all areas of the state~~)):

(1)((-)) Residential burning (except in nonurban areas of any county with an unincorporated population of less than 50,000 ((~~fifty thousand~~)));

(2)((-)) Land clearing burning;

(3)((-)) Storm or flood debris burning;

(4)((-)) Tumbleweed burning (except in counties with a population of less than 250,000 ((~~two hundred fifty thousand~~));

(5)((-)) Weed abatement fires;

(6)((-)) Fire((-))fighting instruction fires for training to fight structural fires in urban growth areas and cities with a population over 10,000 ((~~ten thousand~~)), and all other fire((-))fighting instruction fires, except ((~~EXCEPT~~)):

(a)((-)) Fire((-))fighting instruction fires for training to fight structural fires as provided in RCW 52.12.150; ((~~and~~))

(b)((-)) Aircraft crash rescue fires as provided in RCW 70.94.650(5) ((~~28~~)) as referenced in NWCAA 104.1; and

(c)((-)) Forest fires ((~~as provided in RCW 70.94.6528.~~));

(7)((-)) Rare and endangered plant regeneration fires;

(8)((-)) Indian ceremonial fires (except on lands within the exterior boundaries of Indian reservations unless provided for by intergovernmental agreement);

(9)((-)) Recreational fires with a total fuel area greater than three feet in diameter and/or two feet in height (except in the nonurban areas of counties with an unincorporated population of less than 50,000 ((~~fifty thousand~~)); and

(10)((-)) Other outdoor burning if specifically authorized by the NWCAA ((~~local air authority or ecology~~)).

(C)((-)) FEES.

((~~1. Permitting agencies may charge a fee for any permit issued, provided that a fee must be charged for all permits issued for weed abatement fires and fire fighting instruction fires.~~))

((~~2.~~)) The fee for outdoor burning permits shall be as established in NWCAA 324.10. The amount of the fee ((~~All fees must be set by rule and must~~)) will not exceed the level necessary to recover the costs of administering and enforcing a permit program.

((~~TYPE OF PERMIT~~	~~FEE~~
~~Annual training (single location)~~	~~$325.00/year~~
~~Extinguisher Training~~	~~$25.00/training exercise~~
~~Structure training~~	~~$150.00/training exercise~~
~~Weed abatement~~	~~$2.00/acre; $25.00 minimum per location~~))

((~~D. PERMIT DECISIONS.~~

~~1. Permitting agencies must approve with conditions, or deny outdoor burning permits as needed to achieve compliance with this section.~~

~~2. All permits must include conditions to satisfy general prohibitions and requirements that apply to all outdoor burning.~~

~~3. All permits may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions.~~

~~4. Permitting agencies may also include conditions to comply with other laws pertaining to outdoor burning.~~

~~5. Any person having an outstanding penalty obligation to the NWCAA as a result of a violation of Section 502, except under appeal to the Pollution Control Hearings Board (PCHB) or other judicial body, shall be denied additional outdoor burning permits until the remaining balance is discharged.~~))

(D) ((~~E.~~)) ((~~RESIDENTIAL BURNING BY GENERAL PERMIT~~)) REQUIREMENTS FOR RESIDENTIAL BURNING.

((~~1. A general permit for residential burning is adopted for use:~~

~~a. Where the NWCAA has adopted the general permit by reference, and~~

~~b. Any designated enforcing agencies have agreed that a general permit is appropriate for residential burning, and~~

~~c. The public has been notified where the permit applies.~~

~~2. All burning under a general permit must:~~

~~a. Comply with condition (4) of this subsection.~~

~~b. Be restricted to the first and second weekends (Saturday and Sunday) in April and the third and fourth weekends in October unless the enforcing agency substitutes alternative days and adequate notice of the substitution is provided to the public. Alternative days may only be substituted if conditions on the prescribed days are unsuitable due to such things as poor air quality, high fire danger, unfavorable meteorology,~~

likely interference with a major community event, or difficulty for enforcement.

3. The NWCAA may adopt a general permit for residential burning that prescribes a different set of days, not to exceed eight days per year, provided that adequate public notice of where and when the permit will apply is given.))

((4.)) The following conditions apply to all residential burning allowed without a permit under NWCAA 502.5 (B)(1) ((, in the nonurban areas of any county with an unincorporated population of less than fifty thousand, without a permit)) or allowed under a general, verbal, written, or electronic permit. Persons unable to meet these requirements and the requirements in NWCAA 502.4 ((and any other requirements)) must apply for and receive a written permit before burning. Failure to comply with all applicable requirements voids any applicable permit.

(1) ((a.)) ((The)) A responsible person ((responsible)) for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions of each day.

(2) ((b.)) A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area.

(3) ((c.)) The fire must not include prohibited materials as listed in NWCAA 502.4(B).((, construction/demolition debris, or any substance other than natural vegetation.))

(4) ((d.)) The fire must not include materials hauled from another property.

(5) ((e.)) If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately.

(6) ((f.)) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(7) ((g.)) No fires are to be within 50 ((fifty)) feet of structures.

(8) ((h.)) Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

(9) ((i.)) Any burn pile must not be larger than four feet in diameter and three feet high.

(10) ((j.)) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(11) ((k.)) If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 ((one-half)) inch.

(12) ((l.)) No fire is allowed ((permitted)) within 500 ((five hundred)) feet of forest slash.

(E) ((F.)) FIELD RESPONSE AND ENFORCEMENT

(1)((.)) Any agency that issues permits, or adopts a general permit for any type of burning in an area, is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements unless another agency has agreed to be responsible.

(2)((.)) Except for enforcing Section 502.4 (E)(1)(d), the NWCAA will be responsible for enforcing any requirements that apply to burning that are prohibited or exempt from permits in areas of its jurisdiction, unless another agency agrees to be responsible.

(3)((.)) Permitting agencies and enforcing agencies may require that corrective action be taken, and may assess penalties to the extent allowed if they discover noncompliance.

502.6 AREAS AND TYPES OF PROHIBITED OUTDOOR BURNING.

(A)((.)) NONATTAINMENT AREAS. ((Nonattainment areas.)) Residential burning and land clearing burning shall not occur ((may not be allowed)) in any areas ((of the state)) that exceed federal or state ambient air quality standards for pollutants emitted by outdoor burning ((as identified in WAC 173-425-040(1))). These areas are limited to all nonattainment areas and former nonattainment areas for carbon monoxide, particulate matter (PM_{10} and $PM_{2.5}$), sulfur dioxide, nitrogen dioxide, and lead.

(B)((.)) URBAN GROWTH AREAS. ((Urban Growth Areas.)) No person shall cause or allow ((R))residential burning and land clearing burning ((may not be allowed)) in any urban growth areas. ((except as follows:

1. Residential burning and land clearing burning may be allowed, until December 31, 2006, in urban growth areas for incorporated cities with a population of less than five thousand that are neither within nor contiguous with any areas identified in section 502.6(A).

2. Residential burning and land clearing burning may be allowed, until December 31, 2006, in urban growth areas that do not include an incorporated city.))

(C)((.)) CITIES OVER 10,000 POPULATION. ((Cities over 10,000 population.)) Residential burning and land clearing burning shall not occur ((may not be allowed)) in any cities having a population greater than 10,000 ((ten thousand)) people. ((after December 31, 2000.)) Cities having this population must be identified by using the most current population estimates available for each city.

(D)((.)) HIGH DENSITY AREAS. ((High density areas.)) Land clearing burning shall not occur ((may not be allowed)) in any area having a general population density of 1,000 ((one thousand)) or more persons per square mile. ((after December 31, 2000, if the area is contiguous with any area where land clearing burning has already been, or must be, prohibited under subsection (A), (B), or (C) of this section. Land clearing burning may not be allowed in any other areas having this density after December 31, 2006.)) All areas having this density must be identified by using the most current population data available for each census block group and dividing by the land area of the block group in square miles.

(E)((.)) AREAS WITH A REASONABLE ALTERNATIVE TO BURNING. ((Areas with a reasonable alternative to burning.)) Residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires and other outdoor burning of organic refuse shall not occur ((may not be allowed)) in any area ((of the state)), including the areas identified in subsections 502.6(A) through ((-)) 502.6(D), when a reasonable alternative for that type of burning is found to exist in the area for that type of burning. A rea-

sonable alternative for a particular type of burning exists when the alternative is available and reasonably economical and less harmful to the environment as defined in WAC 173-425-040(5) as referenced in NWCAA 104.1.

((~~F. By December 31, 2000 and at least every third year thereafter, each local air authority, and ecology in cooperation with counties must determine whether any reasonable alternative for a particular type of burning, where burning of that type is allowed, exists. Determinations for other outdoor burning must be made on a permit-by-permit basis to determine whether an alternative is available and reasonably economical and less harmful to the environment. A reasonable alternative exists when the option is available, reasonably economical, and less harmful to the environment as stated in WAC 173-425-040(5).~~))

(F) No person shall cause or allow outdoor burning at permanently-located business establishments excluding land clearing operations.

((~~502.7 ADDITIONAL REQUIREMENTS FOR LAND CLEARING BURNING. The following "best available burning practices" shall be used when land clearing burns are conducted on land not subject to the Forest Protection Assessment (RCW 76.04.610). Land clearing burning conducted on lands subject to the Forest Protection Assessment is regulated by the Washington Department of Natural Resources under WAC 332-24-201.~~

~~A. No land clearing fire shall be larger than fifty (50) feet in diameter and be located less than five times the fire diameter size from any structure.~~

~~B. At least one fan rated and operated at 6,000 cubic feet per minute must be on site for each twenty-five (25) feet of fire diameter and must be used to facilitate ignition and burning.~~

~~C. Material for a fire must be free of excess dirt and machine stacked by an excavator or equivalent machine, which must be on site and employed until fire is fully extinguished. The ratio of stack height to burn pile diameter shall be as high as possible but no less than 1:2.~~

~~D. The number of fires per parcel, defined as a single, integrated, land area that is being cleared by a party, shall not exceed more than two piles per excavator, except that, two additional fires may be lit when the two fires are approximately seventy-five percent consumed.~~

~~E. A person qualified to operate stacking or equivalent machinery shall be present at the immediate fire site during burning.~~

~~F. Burning shall be conducted in such a manner as to prevent any smoke and/or particulate matter from being emitted that is or is likely to restrict visibility on a public road or airport landing strip.~~

~~G. Outdoor fires for the purpose of land clearing burning must have a written permit from the appropriate fire permitting agency. Notwithstanding the restrictions listed in sections 502.6(A) through 502.6(F) above, all land clearing fires must meet any additional conditions listed on the permit and all other applicable air pollution regulations.~~

~~H. No fires shall be permitted for the burning of material generated from land clearing projects located in areas where a burn ban exists.~~

~~I. It shall be unlawful for any person to cause or allow the burning of material generated from land clearing projects located in areas where a burn ban exists.~~

~~J. It shall be unlawful for any person to cause or allow the burning of any land clearing material that has not been generated on that site.~~))

((~~502.8 Additional requirements for commercial establishments.~~

~~A. No outdoor burning is allowed at permanently located commercial establishments excluding land clearing operations. The Northwest Clean Air Agency may issue fire permits on a case-by-case basis for extenuating circumstances e.g., mitigating an immediate threat to human health or safety.~~))

PASSED: January 8, 1969 ((June 14, 2001)) AMENDED: June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, September 11, 2014

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 504 – AGRICULTURAL BURNING

504.1 Purpose. This Section establishes fees and controls for agricultural burning in the NWCAA jurisdiction in order to minimize adverse health effects and environmental impacts, consistent with best management practices and the responsibilities of the NWCAA under chapter ((~~WAC~~)) 173-430 WAC as referenced in NWCAA 104.1, RCW 70.94.6528 as referenced in NWCAA 104.1, 70.94.6532 as referenced in NWCAA 104.1, and 70.94.6524 as referenced in NWCAA 104.1. All agricultural burning as defined in chapter ((~~WAC~~)) 173-430 WAC as referenced in NWCAA 104.1 shall be conducted in accordance with the provisions of that chapter.

504.2 Applicability. This Section applies to agricultural burning in all areas of the NWCAA jurisdiction unless specifically exempted. Nothing in Section 504 shall apply to silvicultural burning or other outdoor burning (((~~(Chapter 173-425 WAC)~~))). Propane flaming for the purpose of vegetative debris removal is considered agricultural burning.

504.3 Conditions. All agricultural burning, except for agricultural burning that is incidental to commercial agricultural activities (((~~(RCW 70.94.6524)~~))), requires a permit and payment of a fee issued by the NWCAA.

504.4 Fees. In accordance with RCW 70.94.6528 as referenced in NWCAA 104.1, the NWCAA shall assess a fee for all agricultural burning permits as specified in NWCAA 324.9. ((~~All agricultural burning permits require a fee in accordance with Chapter 70.94.6528. Propane flaming for the purpose of vegetative debris removal is considered agricultural burning (WAC 173-430-030(1)). The fee shall be the greater of the minimal fee level and the variable fee level.~~))

((~~504.41 Minimum fee levels:~~

~~504.411 Twenty-five dollars per calendar year per agricultural operation based on burning up to ten acres or equivalent;~~

~~504.412 Fifty dollars for orchard tear-out burning per calendar year per agricultural operation based on burning debris of up to twenty acres or equivalent.~~

~~504.42 Variable fee levels (based on acreage or equivalent):~~

~~504.421 Through calendar year 2007, the fee is two dollars per acre.~~

~~504.422 Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.~~

~~504.43 Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration. The permit fee shall be distributed as follows:~~

~~Fee Level~~	~~Section~~	~~Local Administration~~	~~Research~~	~~Ecology Administration~~
~~$25.00~~	~~WAC 173-430-040 (4)(a)(i)~~	~~$12.50~~	~~$12.50~~	~~$0~~
~~$50.00~~	~~WAC 173-430-040 (4)(a)(ii)~~	~~$12.50~~	~~$12.50~~	~~$25.00~~
~~2007 - $2.00 per acre~~	~~WAC 173-430-040 (4)(b)(i)~~	~~$1.25 per acre~~	~~$0.25 per acre~~	~~$0.50 per acre~~
~~2008 and beyond - $2.25 per acre~~	~~WAC 173-430-040 (4)(b)(ii)~~	~~$1.25 per acre~~	~~$0.50 per acre~~	~~$0.50 per acre~~))

PASSED: February 14, 1973 AMENDED: ((~~By Adoption of WAC 18-16 January 24, 1972,~~)) August 9, 1978, June 7, 1990, May 9, 1996, May 14, 1998, November 12, 1998, November 8, 2007, September 11, 2014

AMENDATORY SECTION

SECTION 550 - PREVENTING PARTICULATE MATTER FROM BECOMING AIRBORNE

550.1 The owner or operator of a source or activity that generates fugitive dust, including, but not limited to, material handling, building construction or demolition, abrasive blasting, roadways and lots, shall employ reasonable precautions to prevent fugitive dust from becoming airborne and must maintain and operate the source or activity to minimize emissions. ((~~It shall be unlawful for any person or operation to cause or permit material to be handled, transported or stored without using Reasonably Available Control Technology to prevent the release of fugitive particulate matter to the ambient air.~~))

((~~550.2 It shall be unlawful for any person to cause or permit a building or its appurtenances to be constructed, altered, repaired or demolished, or conduct abrasive blasting, without using Reasonably Available Control Technology to prevent the release of fugitive particulate matter to the ambient air.~~

~~550.3 It shall be unlawful for any person to cause or permit the release of fugitive particulate matter to the ambient air from public or private lots, roadways, or open areas without using Reasonably Available Control Technology.~~))

550.2 ((~~4~~)) It shall be unlawful for any person to cause or allow ((~~permit~~)) the emission of particulate matter which becomes deposited upon the property of others in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

550.3 For this section, reasonable precautions may include, but are not limited to:

(A) Applying and reapplying water as necessary on materials and/or surfaces (e.g., access roads, etc.);

(B) Using enclosed conveyors, containment, and covered containers when handling and transferring materials;

(C) Covering loads when transporting material;

(D) Limiting vehicle speed on unpaved surfaces;

(E) Paving or installing quarry spalls at exit aprons;

(F) Cleaning vehicle tires and undercarriages before exiting to paved public roadways; and

(G) Promptly cleaning material that has been tracked out onto paved public roadways.

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, October 14, 1987, April 14, 1993, November 12, 1999, July 14, 2005, September 11, 2014

Reviser's note: The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 570 - ASBESTOS CONTROL STANDARDS

570.1 The Board of Directors of the Northwest Clean Air Agency recognize that asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board has, therefore, determined that any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects in order to protect the public health. In addition, the Board has adopted these regulations to coordinate with the EPA asbestos NESHAP, the OSHA asbestos regulation, the Washington Department of Labor and Industries asbestos regulations, the Washington Department of Ecology Dangerous Waste regulation, and the solid waste regulations of Island, Skagit and Whatcom Counties.

570.2 DEFINITIONS

((~~a~~)) AHERA BUILDING INSPECTOR ((~~means a~~)) - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan((~~; Interim Final Rule~~)) (40 CFR Part 763, Appendix C to Subpart E, I.B.3) and whose certification is current.

((~~b~~)) AHERA PROJECT DESIGNER ((~~means a~~)) - A person who has successfully completed the training requirements for

an abatement project designer established by EPA regulations (40 CFR 763.90(g)) and whose certification is current.

((~~e~~)) ASBESTOS ((~~means t~~)) - The asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

((~~d~~)) ASBESTOS-CONTAINING MATERIAL ((~~means a~~)) - Any material containing more than one percent ((~~(1%)~~)) asbestos as determined using the method specified in EPA regulations Appendix A, Subpart F, 40 CFR Part 763, Section l, Polarized Light Microscopy.

((~~e~~)) ASBESTOS-CONTAINING WASTE MATERIAL ((~~means a~~)) - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

((~~f~~)) ASBESTOS PROJECT ((~~means a~~)) - Any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of asbestos-containing material, or any other action that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of stored asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

((~~g~~)) ASBESTOS SURVEY ((~~means a~~)) - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

((~~h~~)) COMPETENT PERSON ((~~means a~~)) - A person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the NWCAA to take prompt corrective measures to eliminate them, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

((~~i~~)) COMPONENT ((~~means a~~)) - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

((~~j~~)) DEMOLITION ((~~means w~~)) - Wrecking, razing, leveling, dismantling, or burning of a structure, making all or part of the structure permanently uninhabitable or unusable.

((~~k~~)) FRIABLE ASBESTOS-CONTAINING MATERIAL ((~~means a~~)) - Asbestos-containing material that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

((~~l~~)) LEAK-TIGHT CONTAINER ((~~means a~~)) - A dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

((~~m~~)) NONFRIABLE ASBESTOS-CONTAINING MATERIAL ((~~means a~~)) - Asbestos-containing material that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

((~~n~~)) OWNER-OCCUPIED, SINGLE-FAMILY RESIDENCE ((~~means a~~)) - Any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is currently used by one family who owns the property as their ((~~domicile~~)) primary or seasonal residence. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

((~~o~~)) PERSON ((~~means a~~)) - Any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

((~~p~~)) RENOVATION ((~~means a~~)) - Altering a facility or a component in any way, except demolition.

((~~q~~)) SURFACING MATERIAL ((~~means m~~)) - Material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

((~~r~~)) SUSPECT ASBESTOS-CONTAINING MATERIAL ((~~means m~~)) - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and siding.

((~~s~~)) THERMAL SYSTEM INSULATION ((~~means m~~)) - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

570.3 ASBESTOS SURVEY REQUIREMENTS

(A) ((~~a~~)) Requirements for Renovations

It shall be unlawful for any person to cause or allow a renovation unless the property owner or the owner's agent determines whether there are suspect asbestos-containing materials in the work area and obtains an asbestos survey of any suspect asbestos-containing materials by an AHERA building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of an owner-occupied, single-family residence.

(1) If there are no suspect materials in the work area, this determination shall either be posted at the work site or communicated in writing to all contractors involved in the renovation.

(2) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(3) Except for renovations of an owner-occupied, single-family residence, only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(4) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

(B) ((~~b~~)) Requirements for Demolitions

It shall be unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey by an AHERA building inspector of the structure to be demolished.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

570.4 NOTIFICATION REQUIREMENTS

(A) ((~~a~~)) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the NWCAA on approved forms, in accordance with the advance notification period requirements contained in 570.4(D((~~d~~))) of this Regulation.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material.

(3) Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Section 570.

(4) Notification is required for all demolitions of structures with a greater than 120 square feet footprint even if no asbestos-containing material is present. All other demolition requirements remain in effect.

(5) The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in 324.8 ((~~570.4(d)~~)) of this Regulation unless prior arrangements for payment have been made with the NWCAA.

(6) A copy of the notification, all amendments to the notification, the asbestos survey, and any Order of Approval for an alternate means of compliance shall be available for inspection at all times at the asbestos project or demolition site.

(7) Notification for multiple asbestos projects or demolitions may be filed by a property owner on one form if all the following criteria are met:

(a) ((~~A~~)) The work will be performed continuously by the same contractor; and

(b) ((~~B~~)) A work plan is submitted that includes: a map of the structures involved in the project including the site address for each structure; the amount and type of asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For projects where a detailed work schedule cannot be provided the asbestos contractor and/or the demolition contractor shall participate in the NWCAA's work schedule fax program and will continue to participate in the program throughout the duration of the project.

(8) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(a) ((~~A~~)) The annual notification shall be filed with the NWCAA before commencing work on any asbestos project included in an annual notification;

(b) ((~~B~~)) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components; and

(c) ((~~C~~)) The property owner submits quarterly written reports to the Control Officer on NWCAA-approved forms within 15 days after the end of each calendar quarter.

(B) ((~~b~~)) Mandatory Amendments

((~~1) Mandatory Amendments~~))

An amendment shall be submitted to the Control Officer for the following changes in a notification:

(1) ((~~A~~)) Increases in the project type or job size category that increase the fee or change the advance notification period;

(2) ((~~B~~)) Changes in the type of asbestos-containing material that will be removed; or

(3) ((~~C~~)) Changes in the start date, completion date, or work schedule, including hours of work. Asbestos contractors or property owners participating in the NWCAA work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.

(C) ((~~c~~)) Emergencies

The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(4) The project must proceed to avoid imposing an unreasonable burden.

(D) ((~~d~~)) Notification Period ((~~and Fees~~))

Project	((~~Size or Type~~))	Notification Period	((~~Fee~~))
Asbestos Project Residential – Owner-Occupied – ((~~,~~)) Single Family Residence 10 - 259 linear feet or 48 - 159 square feet)* 260 - 999 linear feet or 160 - 4999 square feet > 1000 linear feet or > 5000 square feet) (((~~asbestos project and/or demolition~~)))	((~~All~~))	Prior Notice 3 days 10 days 10 days	((~~$25~~))
((~~All Other~~)) Demolitions with no ((~~a~~))Asbestos ((~~p~~))Project	((~~All~~))	10 days	((~~$0~~))
((~~Asbestos Project*~~))	((~~10-259 linear ft. 48-159 square feet.~~))	((~~3 days~~))	((~~$150~~))
((~~Asbestos Project~~))	((~~260-999 linear ft. 160-4,999 sq. ft.~~))	((~~10 days~~))	((~~$300~~))
((~~Asbestos Project~~))	((~~> 1,000 linear ft. > 5,000 sq. ft.~~))	((~~10 days~~))	((~~$500~~))
Emergency Classification (NWCAA 570.4(C))	((~~570.4(c)~~))	Prior Notice	((~~$0~~))
Amendments (NWCAA 570.4(B))	((~~570.4(b)~~))	Prior Notice	((~~$0~~))
((~~Alternate Means of Compliance (demolitions or friable asbestos- containing materials)~~)))	((~~570.7 (a) or (c)~~))	((~~10 days~~))	((~~Add'l fee equal to project fee~~))
((~~Alternate Means of Compliance (non-friable asbestos-containing materials)~~)))	((~~570.7(b)~~))	((~~10 days~~))	((~~Add'l fee equal to project fee~~))
Annual Notification (NWCAA 570.4 (A)(8))	((~~570.4 (a)(8)~~))	Prior Notice	((~~$500~~))

*Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.

The Control Officer may waive the ((~~asbestos project fee and~~)) notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

570.5 ASBESTOS REMOVAL REQUIREMENTS PRIOR TO RENOVATION OR DEMOLITION

(A) ((~~a~~)) Removal of Asbestos Prior to Renovation or Demolition

Except as provided in 570.6((~~7~~))(C((~~e~~))) of this Regulation, it shall be unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(B) ((~~b~~)) Exception for Hazardous Conditions

Asbestos-containing material need not be removed prior to a demolition, if the property owner demonstrates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material.

570.6 PROCEDURES FOR ASBESTOS PROJECTS

(A) ((~~a~~)) Training Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety and Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to ((~~asbestos projects conducted as part of a renovation in an owner-occupied, single-family residence performed by the resident owner of the dwelling~~)) individuals who work on asbestos projects on their own single family residence(s), no part of which is used for any commercial purpose.

(B) ((~~b~~)) Asbestos Removal Work Practices

Except as provided in 570.6((~~7~~))(C((~~e~~))) of this Regulation, it shall be unlawful for any person to cause or allow the

removal of asbestos-containing material unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

(3) Absorbent, asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated, absorbent, asbestos-containing materials exposed during removal shall be immediately saturated with a liquid wetting agent.

(4) Nonabsorbent, asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent, asbestos-containing materials exposed during removal shall be immediately coated with a liquid wetting agent.

(5) Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material are exempt from the requirements of 570.6 (B((~~b~~)))(3) and 570.6 (B((~~b~~)))(4) if all access to the asbestos-containing material is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

(6) Except for surfacing materials being removed inside a negative pressure enclosure, asbestos-containing materials that are being removed, have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged.

(7) All asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(8) All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers while saturated with a liquid wetting agent. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers while coated with a liquid wetting agent.

(9) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

(10) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

(11) Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(12) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(C) ((~~c~~)) Method of Removal for Nonfriable Asbestos-Containing Roofing Material

The following asbestos removal method shall be employed for asbestos-containing roofing material that has been determined to be nonfriable by a Competent Person or an AHERA Project Designer:

(1) The nonfriable asbestos-containing roofing material shall be removed using methods such as spud bar and knife. Removal methods such as sawing or grinding shall not be employed;

(2) Dust control methods shall be used as necessary to assure no fugitive dust is generated from the removal of nonfriable asbestos-containing roofing material;

(3) Nonfriable asbestos-containing roofing material shall be carefully lowered to the ground to prevent fugitive dust;

(4) After being lowered to the ground, the nonfriable asbestos-containing roofing material shall be immediately transferred to a disposal container; and

(5) Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material.

570.7 COMPLIANCE WITH OTHER RULES

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

570.8 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

(A) ((~~a~~)) Except as provided in 570.8(C((~~e~~))) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 days of removal at a waste disposal site authorized to accept such waste.

(B) ((~~b~~)) Waste Tracking Requirements

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless the following requirements are met:

(1) Maintain waste shipment records, beginning prior to transport, using a form that includes the following information:

(a) ((~~A~~)) The name, address, and telephone number of the waste generator;

(b) ((~~B~~)) The approximate quantity in cubic meters or cubic yards;

(c) ((~~C~~)) The name and telephone number of the disposal site operator;

(d) ((~~D~~)) The name and physical site location of the disposal site;

(e) ((~~E~~)) The date transported;

(f) ((~~F~~)) The name, address, and telephone number of the transporter; and

(g) ((~~G~~)) A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway

according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record to the disposal site at the same time the asbestos-containing waste material is delivered.

(3) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

(4) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(C) ((~~e~~)) Temporary Storage Site

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all the following conditions are met:

(1) Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material shall be stored in leak-tight containers and the leak-tight containers shall be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

(D) ((~~d~~)) Disposal of Asbestos Cement Pipe

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

PASSED: November 12, 1998 AMENDED ((~~Amended~~)): July 14, 2005, November 8, 2007, September 11, 2014

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 14-20-008
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 14-266—Filed September 19, 2014, 9:50 a.m., effective October 20, 2014]

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

Purpose: This rule proposal makes changes to geoduck diver license rules in response to statute changes that limited the amount of geoduck diver licenses that the Washington department of fish and wildlife (WDFW) may issue per year to seventy-seven licenses beginning January 1, 2015. These changes create a clear, efficient process for the issuance of geoduck diver licenses in new WAC 220-52-01904, as well as making necessary technical changes to WAC 220-52-01901 for clarity.

Reasons supporting proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing on August 8, 2014. The proposed changes were adopted by the commission at the September 19, 2014, commission meeting. The changes provide a clear process for WDFW in issuing geoduck diver licenses in light of the license limitation imposed by the legislature and accomplish necessary technical changes for clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-01901.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

Adopted under notice filed as WSR 14-14-135 on July 2, 2014.

Changes Other than Editing from Proposed to Adopted Version: The only change to the rules after the CR-102 filing was the removal of references to geoduck diver licenses in WAC 220-52-01901(4), as Occupational Safety and Health Administration requirements do not directly apply to geoduck diver license holders, only to geoduck fishery license holders. The geoduck commercial fishing industry supports the changes to WAC 220-52-10901 and the rule changes in general.

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

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

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

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

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

Date Adopted: September 19, 2014.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-01901 Commercial geoduck harvest license. (1) It is unlawful to commercially harvest geoducks unless the harvester possesses a valid, director-issued geoduck fishery license or geoduck diver license. A geoduck fishery license card is a "license card" under WAC 220-69-270.

(2) Only persons holding current geoduck harvest agreements from the department of natural resources or their agents may apply for a geoduck fishery license((~~s~~)). An application for a geoduck fishery license must be fully completed on a form provided by the department and accompanied by a copy of the geoduck harvest agreement for which the license is sought.

(3) Each geoduck fishery license authorizes the use of two water jets or other units of geoduck harvest gear. Commercial geoduck harvesting gear must meet the requirements of WAC 220-52-019.

(4) Holders of geoduck fishery licenses must comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et. seq. Some of these regulations appear at 29 C.F.R. Part 1910, Subpart T.

(a) The director may suspend or revoke a geoduck fishery license used in violation of commercial diving safety regulations, including 29 C.F.R. Part 1910, Subpart T, adopted under the Occupational Safety and Health Act of 1970. The procedures of chapter 34.05 RCW apply to these suspensions or revocations.

(b) If there is a substantial probability that a violation of commercial diving safety regulations could result in death or serious physical harm to a person harvesting geoducks, the director may immediately suspend the license until the violation is corrected. If the violator fails to correct the violation within ten days of notice of the violation, the director may revoke the violator's geoduck fishery license. The director may not revoke a geoduck fishery license if the holder of the harvesting agreement corrects the violation within ten days of receiving written notice of the violation.

NEW SECTION

WAC 220-52-01904 Commercial geoduck harvest—License application and issuance process for 2015 geoduck diver licenses. To ensure compliance with RCW 77.65.410 and chapter 204, section 2, Laws of 2013 (2SHB 1764), and the equitable issuance of geoduck diver licenses, the department adopts the following provisions to address the limitation of geoduck diver licenses to 77 licenses in 2015:

(1) Effective January 1, 2015, no more than 77 geoduck diver licenses may be issued per calendar year.

(2) Individuals who had first right of refusal for a 2015 geoduck diver license as provided in chapter 204, section 2, Laws of 2013 (2SHB 1764), and indicated his or her intent to purchase a geoduck diver license by January 28, 2014, must apply for a 2015 geoduck diver license prior to 5:00 p.m. on December 1, 2014.

(a) If more than 77 qualified applicants who had first right of refusal apply for a 2015 geoduck diver license prior to 5:00 p.m. on December 1, 2014, the department will conduct a random drawing to determine the applicants who will be issued one of the 77 available geoduck diver licenses.

(b) If the department receives less than 77 applications from qualified "first right of refusal" applicants by December 1, 2014, the department will consider applications to renew licenses as provided in RCW 77.65.410. Those who held a geoduck diver license in 2014 and who were listed on a department of natural resources geoduck harvest plan in 2014, but who did not indicate their intent to exercise a first right of refusal by January 28, 2014, may apply to renew after December 1, 2014, and the department will process those applications on a daily basis, in the order received, up to the renewal deadline of December 31, 2014, until the cap of 77 geoduck diver licenses has been reached. If the department receives more than one application to renew a geoduck diver license in a calendar day, and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to determine which of the applicants will receive a renewed geoduck diver license for 2015.

(c) If the number of geoduck diver licenses issued to both "first right of refusal" applicants and "renewal" applicants is still less than 77 on January 1, 2015, the department will issue licenses for qualified applicants for a 2015 geoduck diver license in the order the applications are received. However, if the department receives more than one application in a calendar day and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to determine which of the applicants will receive a geoduck diver license for 2015.

(3) For the purposes of this section, a "qualified applicant" is a person who submits the following when applying for a geoduck diver license:

(a) A complete, legible, and signed application form;

(b) A copy of a department of natural resources (DNR) geoduck harvest agreement plan of operation that lists the applicant on the agreement. The copy of the harvest agreement plan of operation can be from 2011, 2012, 2013, or 2014 for "first right of refusal" applicants, but must be from 2014 for "renewal" applicants;

(c) The application and license fees as provided in RCW 77.65.440; and

(d) For any application received on or after January 1, 2015, proof of completion of the DNR geoduck diver safety program.

WSR 14-20-009
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 14-267—Filed September 19, 2014, 9:50 a.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: This rule proposal makes changes to geoduck diver license rules in response to statute changes that limited the amount of geoduck diver licenses that the Washington department of fish and wildlife (WDFW) may issue per year to seventy-seven licenses beginning January 1, 2015. These changes create a clear, efficient process for the issuance of geoduck diver licenses in new WAC 220-52-01905, which will carry forward the license issuance process after January 1, 2015. Another rule project addressing the on-boarding of the license issuance process and technical changes was accomplished in tandem with this rule making. As this rule change is not needed until after January 1, 2015, the effective date has been postponed until that time.

Reasons supporting proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing on August 8, 2014. The proposed changes were adopted by the commission at the September 19, 2014, commission meeting. The changes provide a clear process for WDFW in issuing geoduck diver licenses in light of the license limitation imposed by the legislature and accomplish necessary technical changes for clarity.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

Adopted under notice filed as WSR 14-14-136 on July 2, 2014.

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

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

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

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

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

Date Adopted: September 19, 2014.

Miranda Wecker, Chair
Fish and Wildlife Commission

NEW SECTION

WAC 220-52-01905 Commercial geoduck harvest—Geoduck diver license application and issuance process. (1) The department will not consider incomplete applications for a geoduck diver license. The following information is required to apply for or renew a geoduck diver license:

(a) A complete, legible, and signed application form;

(b) The application and license fees as provided in RCW 77.65.440;

(c) Proof of completion of the department of natural resources (DNR) geoduck diver safety program; and

(d) For applications to renew only, a copy of a DNR geoduck harvest agreement plan of operation that lists the applicant on the agreement during the applicable current calendar year.

(2) No more than 77 geoduck diver licenses may be issued per calendar year.

(3) Applicants may submit applications to the department:

(a) By mailing to 600 Capitol Way N., Olympia, WA 98501-1091;

(b) By faxing to 360-902-2945; or

(c) In person at the WDFW licensing front desk, first floor, natural resources building at 1111 Washington St. S.E., Olympia, WA 98501.

(4) The department must receive applications to renew a geoduck diver license by December 31st of the year the licensee's current geoduck diver license expires. If less than 77 geoduck diver licenses have been issued after the department approves all qualifying applications to renew a geoduck diver license, the department will issue additional licenses, up to the 77 geoduck diver license limit, to qualified applicants in the order they are received. If the department receives more than one application for a geoduck diver license in a calendar day, and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to determine which of the applications received in that calendar day will be issued a geoduck diver license.

WSR 14-20-023
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 14-268—Filed September 19, 2014, 4:52 p.m., effective October 20, 2014]

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

Purpose: Amends rules for commercial salmon fishing in Grays Harbor. These rules incorporate recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Citation of Existing Rules Affected by this Order: Amending WAC 220-36-023.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 14-15-139 on July 23, 2014.

Changes Other than Editing from Proposed to Adopted Version: In [Area] 2A-D, the following changes were made: (1) The 12-hour opening during week 40 was deleted from the schedule; (2) there were two 8-hour openers, one each, added to week 43 and 44; (3) instead of one 48-hour fishery, week 45 consists of one 8-hour opener and two 12-hour openers; and (4) the 36-hour opener during week 46 is broken into two pieces, one 8-hour and one 12-hour opener. The final 12-hour opening is reserved as a compliance incentive day and will only be open if compliance with regulations meets standards.

Language is added to the gillnet restrictions and regulations as follows: "The lead line cannot rest on the bottom in such a manner as to limit the ability for net to drift" and "It is unlawful to utilize any object to impede a gill net or its attached line or float from drifting."

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

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

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

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

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

Date Adopted: September 19, 2014.

Philip Anderson
Director

AMENDATORY SECTION (Amending WSR 13-19-027, filed 9/9/13, effective 10/10/13)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon((~~, and white sturgeon~~)), and shad as provided ((~~for~~)) in this section and in the times and area identified in the chart below.

Time:	Areas:
((~~7:00 a.m. October 10 through 7:00 p.m. October 10, 2013;~~	~~Area 2A and that portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam (N 46.96978, W 123.88022) and Chehalis rivers to Renney Island, then easterly to "Range Marker G," located on the south shore of Grays Harbor, then to the eastern boundary of Area 2D at the Highway 101 Bridge.~~
~~7:00 a.m. October 24 through 7:00 p.m. October 24, 2013;~~	~~Area 2A and Area 2D.~~
~~7:00 a.m. October 25 through 7:00 p.m. October 25, 2013;~~	
~~7:00 a.m. October 29 through 7:00 p.m. October 29, 2013;~~	
~~6:00 p.m. November 7 through 6:00 p.m. November 9, 2013; and~~	
~~6:00 p.m. November 10 through 6:00 p.m. November 12, 2013.~~	
~~7:00 a.m. November 1 through 7:00 p.m. November 1, 2013;~~	~~Area 2C~~
~~7:00 a.m. November 2 through 7:00 p.m. November 2, 2013;~~	
~~7:00 a.m. November 6 through 7:00 p.m. November 6, 2013; and~~	
~~7:00 a.m. November 14 through 7:00 p.m. November 14, 2013.~~))	
12:00 p.m. October 22 through 8:00 p.m. October 22;	Area 2A and Area 2D
6:00 a.m. October 23 through 6:00 p.m October 23;	
12:00 p.m. October 28 through 8:00 p.m October 28;	
7:00 a.m. October 29 through 7:00 p.m. October 29;	
12:00 p.m. November 3 through 8:00 p.m. November 3;	
7:00 a.m. November 4 through 7:00 p.m. November 4;	
7:00 a.m. November 5 through 7:00 p.m. November 5;	
AND	
12:00 p.m. November 11 through 8:00 p.m. November 11.	
12:00 p.m. October 28 through 11:59 p.m. October 29;	Area 2C
12:00 p.m. November 4 through 11:59 p.m. November 5;	
AND	
12:00 p.m. November 12 through 11:59 p.m. November 12.	

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) ((~~Areas 2A and 2D from October 1 through October 15, 2013, tangle net gear only. Single-wall nets are required. Maximum mesh size must not exceed four and one-quarter inches. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Strings/slackers are required, and nets may hang no more than 28 feet from cork line to lead line. It is unlawful to use set net gear. Net construction must include sufficient floatation to ensure the cork line remains at the surface when in the act of fishing.~~

~~(e)~~)) Areas 2A and 2D from October ((~~16~~)) 21 through November 30((~~, 2013.~~)): Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iv) It is unlawful to use a gillnet to fish for salmon ((~~or white sturgeon~~)) if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(((~~d~~))) (c) Area 2C ((~~August 16~~)) from October 21 through November 30((~~, 2013,~~)): Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed ((~~eight and one-half inch maximum~~)) nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon ((~~or white sturgeon~~)) if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead and wild (unmarked) coho must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A, 2C, and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(((~~(b) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in a recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (d) of this subsection.~~

~~(c) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.~~

~~(d) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A and 2D. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.~~

~~Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.~~))

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 21 through November 30.

(5) Retention of any species other than Chinook, chum, or hatchery coho marked by a healed scar at the site of the adipose fin, or shad, is prohibited in Area 2C from October 21 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(((~~(5)~~))) (7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on October ((~~4, 2013~~)) 21, for openings in Areas 2A ((~~and~~)), 2C, or 2D.

(((~~(6) Retention of any species other than coho or chum, or white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, or hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October 1 through November 30, 2013.~~

~~(7) Retention of any species other than Chinook, coho, and chum, and white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, is prohibited in Area 2C.~~

~~(8) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.~~

~~(9) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.~~

~~(10) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size, and all green sturgeon, obtain available information from tags without removing the tags.~~

~~(11)~~))) (10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 14-20-029
PERMANENT RULES
COLUMBIA BASIN COLLEGE

[Filed September 23, 2014, 9:31 a.m., effective October 24, 2014]

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

Purpose: Chapter 132S-40 WAC, Code for student rights and responsibilities, new sections with supplemental definitions and appeals were added to this WAC for Columbia Basin College (CBC) to be compliant with requirements of the Violence Against Women Reauthorization Act of 2013 (VAWA). The adopted new sections will supplement the college's student rights and responsibilities code related to sexual misconduct procedures, complaint process and appeal rights.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: 42 U.S.C. Chapter 136, Subchapter III - Violence Against Women.

Adopted under notice filed as WSR 14-15-148 on July 23, 2014.

Changes Other than Editing from Proposed to Adopted Version: CBC's student code needed additional definitions to be in compliance with VAWA: WAC 132S-40-315, adds supplemental definitions; WAC 132S-40-365, adds supplemental sexual misconduct procedures; WAC 132S-40-375, adds supplemental appeal rights; and WAC 132S-40-425, adds supplemental complaint process.

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

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

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

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

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

Date Adopted: September 23, 2014.

Camilla Glatt
Vice-President
for Human Resources
and Legal Affairs

NEW SECTION

WAC 132S-40-315 Supplemental definitions. The following supplemental definitions shall apply for the purposes of student conduct proceedings which includes allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (5) of this section.

(2) A "respondent" is the student against whom disciplinary action is initiated.

(3) A "Conduct Officer", also referred to as the "Chief Student Services Officer (CSSO)" and or "Student Conduct Officer" is the person designated by the College to be responsible for the student conduct area within student services, which includes the administration of the Code of Student Rights and Responsibilities.

(4) "Preponderance of the evidence" is the standard of proof used with all student disciplinary matters at Columbia Basin College that fall within the Student Rights and Responsibilities, which means that the amount of evidence needs to be at 51% or "more likely than not" before a student is found responsible for a violation.

(5) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student, including, but not limited to:

(a) sexual activity for which clear and voluntary consent has not been given in advance;

(b) sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) sexual harassment;

(d) sexual violence, which includes, but is not limited to, sexual assault, domestic violence, dating violence, intimate violence, and sexual or gender-based stalking;

(e) non-physical conduct such as sexual or gender-based digital media stalking, sexual or gender based on-line harassment, sexual or gender-based cyber-bullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132S-40-365 Supplemental sexual misconduct procedures. (1) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(2) Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132S-40-360. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132S-40-375 Supplemental appeal rights. (1) The following actions by the conduct officer may be appealed by the complainant:

(a) the dismissal of a sexual misconduct complaint; or

(b) any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct officer within twenty-one (21) days of service of the notice of the discipline decision provided for in WAC 132S-40-360. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

(a) exoneration and dismissal of the proceedings;

(b) a disciplinary warning;

(c) a written reprimand;

(d) disciplinary probation;

(e) suspensions of ten instructional days or less; and/or

(f) any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten (10) instructional days or an expulsion shall be reviewed by the student conduct board.

(7) In proceedings before the student conduct board, respondent and complainant shall have the right to be accompanied by a non-attorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four (4) business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct board, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the board chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective non-attorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct board.

(10) The chair of the student conduct board, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the student conduct board's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

NEW SECTION

WAC 132S-40-425 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the acting conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions are met.

WSR 14-20-036
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed September 24, 2014, 8:46 a.m., effective October 25, 2014]

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

Purpose: Eliminating contribution rate flexibility for members of Teachers' Retirement System Plan 3. This change is necessary to meet plan qualification requirements in the Internal Revenue Code.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 14-17-100 on August 19, 2014.

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

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

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

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

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

Date Adopted: September 24, 2014.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 06-03-097, filed 1/17/06, effective 2/17/06)

WAC 415-111-220 How do I choose a defined contribution rate? (1) **Contribution rates:** If you are a member of the Teachers' Retirement System (TRS) Plan 3, the School Employees' Retirement System (SERS) Plan 3, or the Public Employees' Retirement System (PERS) Plan 3, you are required to contribute from your compensation according to one of the following rate structures:

	Base Rate	Additional Rate	Total Contribution Rate
Option A			
All ages	5.0%	0.0%	5.0%
Option B			
Up to age 35	5.0%	0.0%	5.0%
Age 35 to 44	5.0%	1.0%	6.0%
Age 45 and above	5.0%	2.5%	7.5%
Option C			
Up to age 35	5.0%	1.0%	6.0%

	Base Rate	Additional Rate	Total Contribution Rate
Age 35 to 44	5.0%	2.5%	7.5%
Age 45 and above	5.0%	3.5%	8.5%
Option D			
All ages	5.0%	2.0%	7.0%
Option E			
All ages	5.0%	5.0%	10.0%
Option F			
All ages	5.0%	10.0%	15.0%

(2) **How do I make the choice?** Under WAC 415-111-110, it is your responsibility to complete the correct form for choosing a contribution rate and submitting the form in a timely manner to your employer as directed on the form.

(3) **Where do I get the form to make my choice?** Your employer must provide the appropriate form to choose a contribution rate if you are enrolling in Plan 3 or transferring from Plan 2 to Plan 3.

(4) **When do I have to choose?** You must choose a contribution rate within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must choose a contribution rate at the same time you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

(5) **When do contributions begin?**

(a) Once you choose a contribution rate, contributions will begin the first day of the pay cycle in which you make the choice.

(b) If the employer advises the department that you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered that you should have been reported. The department will decide which date to use.

(6) **What if I work for more than one employer?** If you are a Plan 3 member working in eligible positions for more than one employer, you may select a different contribution rate with each employer.

(7) **What happens if I do not make a choice?** Under RCW 41.34.040, you will be assigned a base rate of 5% (Option A) if:

(a) You are a new employee or changing your employer, and do not choose a contribution rate within the ninety-day election period described in subsection (4) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not choose a contribution rate at the time of transfer. Contributions required under subsection (a) or (b) will begin the first day of the pay cycle in which you are assigned to Option A.

(8) **Can I change my contribution rate?**

(a) If you are a PERS 3 or SERS 3 member, once you choose a contribution rate or are assigned the base rate of 5% (Option A), you cannot change that contribution rate unless you change employers. This rule is required by an IRS decision on the tax qualified status of PERS 2 and 3 and SERS 2 and 3.

(b) Each time you change employers, you must choose a new contribution rate within ninety days or you will be assigned a base rate of 5% (Option A). No contributions will be taken until you choose a rate or until the ninety-day period has elapsed, whichever occurs first.

(c) Each January, through January 2015, TRS Plan 3 members may change their contribution rate option by providing written notification to their employer as described in WAC 415-111-110(1). After January 2015, TRS Plan 3 members may only change their contribution rate option as provided in (b) of this subsection. The termination of TRS rate flexibility after January 2015 is necessary to meet plan qualification requirements in the Internal Revenue Code.

WSR 14-20-041
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed September 24, 2014, 11:03 a.m., effective October 25, 2014]

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

Purpose: Remove lumbar supports for pregnancy from the list of personal and/or comfort items which the agency does not cover. Lumbar supports require prior authorization.

Citation of Existing Rules Affected by this Order: Amending WAC 182-543-6000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 14-17-044 on August 14, 2014.

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

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

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

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

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

Date Adopted: September 24, 2014.

Kevin M. Sullivan
Rules Coordinator

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

WAC 182-543-6000 DME and related supplies, medical supplies and related services—Noncovered. The medicaid agency pays for DME and related supplies, medical supplies and related services only when listed as covered in this chapter. The agency evaluates a request for any durable

medical equipment (DME) and related supplies, prosthetics, orthotics, and medical supplies listed as noncovered in this chapter under the provisions of WAC 182-501-0160. In addition to the noncovered services found in WAC 182-501-0070, the agency does not cover:

(1) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the agency for the client contributes to an increased utility bill;

(2) Instructional materials such as pamphlets and video tapes;

(3) Hairpieces or wigs;

(4) Material or services covered under manufacturers' warranties;

(5) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;

(6) Supplies and equipment used during a physician office visit, such as tongue depressors and surgical gloves;

(7) Prosthetic devices dispensed for cosmetic reasons;

(8) Home improvements and structural modifications, including but not limited to the following:

(a) Automatic door openers for the house or garage;

(b) Electrical rewiring for any reason;

(c) Elevator systems and elevators;

(d) Installation of, or customization of existing, bathtubs or shower stalls;

(e) Lifts or ramps for the home;

(f) Overhead ceiling track lifts;

(g) Saunas;

(h) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;

(i) Swimming pools; and

(j) Whirlpool systems, such as jacuzzis, hot tubs, or spas.

(9) Nonmedical equipment, supplies, and related services, including but not limited to, the following:

(a) Back-packs, pouches, bags, baskets, or other carrying containers;

(b) Bedboards/conversion kits, and blanket lifters (e.g., for feet);

(c) Car seats for children seven years of age and younger or less than four feet nine inches tall, except for prior authorized positioning car seats under WAC 182-543-3200;

(d) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;

(e) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;

(f) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(i) Devices intended for amplifying voices (e.g., microphones);

(ii) Interactive communications computer programs used between patients and health care providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services;

(iii) Two-way radios;

(iv) Rental of related equipment or services; and

(v) Devices requested for the purpose of education.

(g) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;

(h) Ergonomic equipment;

(i) DME that is used in a clinical setting;

(j) Exercise classes or equipment such as exercise mats, exercise balls, bicycles, tricycles, stair steppers, weights, or trampolines;

(k) Generators;

(l) Computer software other than speech generating software, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(m) Computer utility bills, telephone bills, internet service bills, or technical support for computers or electronic notebooks;

(n) Any communication device that is useful to someone without severe speech impairment (including but not limited to cellular telephone and associated hardware, walkie-talkie, two-way radio, pager, or electronic notebook);

(o) Racing strollers/wheelchairs and purely recreational equipment;

(p) Room fresheners/deodorizers;

(q) Bidet or hygiene systems, "sharps" containers, paraffin bath units, and shampoo rings;

(r) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(s) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(t) Wheeled reclining chairs, lounge and/or lift chairs (including but not limited to geri-chair, posture guard, or lazy boy).

(10) Blood pressure monitoring:

(a) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope;

(b) Blood pressure cuff only; and

(c) Automatic blood pressure monitor.

(11) Transcutaneous electrical nerve stimulation (TENS) devices and supplies, including battery chargers;

(12) Functional electrical stimulation (FES) bike;

(13) Wearable defibrillators;

(14) Disinfectant spray;

(15) Periwash;

(16) Bathroom equipment used inside or outside of the physical space of a bathroom:

(a) Bath stools;

(b) Bathtub wall rail (grab bars);

(c) Bed pans;

(d) Bedside commode chair;

(e) Control unit for electronic bowel irrigation/evacuation system;

(f) Disposable pack for use with electronic bowel system;

(g) Potty chairs;

(h) Raised toilet seat;

(i) Safety equipment (including but not limited to belt, harness or vest);

(j) Shower chairs;

(k) Shower/commode chairs;

(l) Sitz type bath or equipment;

(m) Standard and heavy duty bath chairs;

(n) Toilet rail;

(o) Transfer bench for tub or toilet;

(p) Urinal male/female.

(17) Personal and/or comfort items, including but not limited to the following:

(a) Bathroom and hygiene items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;

(b) Full electric beds;

(c) Bedding items, such as mattress pads, blankets, mattress covers/bags, pillows, pillow cases/covers, sheets, and bumper pads;

(d) Bedside items, such as bed trays, carafes, and over-the-bed tables;

(e) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and custom compression garments ((~~and lumbar supports for pregnancy~~));

(f) Clothing protectors, surgical masks, and other protective cloth furniture coverings;

(g) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;

(h) Diverter valves and handheld showers for bathtub;

(i) Eating/feeding utensils;

(j) Emesis basins, enema bags, and diaper wipes;

(k) Health club memberships;

(l) Hot or cold temperature food and drink containers/holders;

(m) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;

(n) Impotence devices;

(o) Insect repellants;

(p) Massage equipment;

(q) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 182-530 WAC;

(r) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;

(s) Page turners;

(t) Radio and television;

(u) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services;

(v) Toothettes and toothbrushes, waterpics, and periodontal devices whether manual, battery-operated, or electric;

(18) Certain wheelchair features and options including, but not limited to, the following:

(a) Attendant controls (remote control devices);

(b) Canopies, including those used for strollers and other equipment;

(c) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);

(d) Decals;

(e) Hub Lock brake;

(f) Identification devices (such as labels, license plates, or name plates);

(g) Lighting systems;

(h) Replacement key or extra key;

(i) Speed conversion kits; and

(j) Trays for clients in a skilled nursing facility.

(19) New DME, supplies, or related technology that the agency has not evaluated for coverage. See WAC 182-543-2100.

WSR 14-20-042
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)

[Filed September 24, 2014, 12:36 p.m., effective November 1, 2014]

Effective Date of Rule: November 1, 2014.

Purpose: The department is amending WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits?, to apply the fifty percent income disregard to countable unearned as well as earned income for the purpose of child-only TANF means-testing only. This change implements HB 2585, passed by the legislature and signed by the governor on March 27, 2014.

An additional change was requested by a nongovernmental agency and reflects the department's new responsibilities in the aftermath of the separation of cash and medical eligibility.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0162.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.010.

Adopted under notice filed as WSR 14-16-110 on August 6, 2014.

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

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

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

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

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

Date Adopted: September 22, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits? (1) Countable income is all income your assistance unit (AU) or your child-only means-testing AU has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance,** earned income incentives and deductions allowed for specific programs under WAC 388-450-0170, 388-450-0177, and ((~~388-450-0175~~)) 388-450-0178;

(c) For child-only means testing AUs only, the department will disregard fifty percent of all countable unearned income, in addition to the deductions in WAC 388-450-0170;

(((~~c~~))) (d) For **Basic Food,** deductions allowed under WAC 388-450-0185; and

(((~~d~~))) (e) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.

(a) Child-only means-testing applies when you are a nonparental relative or unrelated caregiver applying for or receiving a nonneedy TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.

(b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.

(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%
Between 201% and 225% of FPL	80%
Between 226% and 250% of FPL	60%
Between 251% and 275% of FPL	40%
Between 276% and 300% of FPL	20%
Over 300% of the FPL	The children in your care are not eligible for a TANF/SFA grant.

(d) If the children in your care qualify for a TANF/SFA grant once the child-only means-test is applied, the child's income is budgeted against the child-only means-tested payment standard amount.

(e) If the children in your care do not qualify for a TANF/SFA grant ((~~once the child-only means-test is applied~~)), they may still qualify for medical assistance ((~~as described in WAC 388-408-0055 and WAC 388-505-0210~~)). For Washington apple health coverage (medical assistance), go to Washington healthplanfinder to apply or see WAC 182-505-0210 for information regarding eligibility for children for Washington apple health.

(4) For **cash assistance:**

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 or, for child-only means-tested cases, to the payment standard amount in subsection (3) of this section.

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

(5) For **Basic Food,** if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for Basic Food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

WSR 14-20-044
PERMANENT RULES
PARKS AND RECREATION COMMISSION

[Filed September 24, 2014, 2:06 p.m., effective October 25, 2014]

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

Purpose: State parks staff reviewed WACs and 2014 SB 6035 relating to recreational conveyances. The WACs were updated to reflect current practices and to address 2014 legislative requirements. The changes affect four WACs: WAC 352-44-020 Recreational conveyances—Certification, changes to update and clarify the WAC; the repeal of WAC 352-44-050 Recreational conveyances—Safety inspections and 352-44-080 Recreational conveyances—Simulated load test, and including the development of a new WAC 352-44-130 Fees, inspection and plan review.

Citation of Existing Rules Affected by this Order: Repealing WAC 352-44-050 and 352-44-080; amending WAC 352-44-020; and new WAC 352-44-130.

Statutory Authority for Adoption: Chapter 79A.40 RCW.

Adopted under notice filed as WSR 14-15-089 on September [July] 18, 2014.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 2.

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

Date Adopted: September 24, 2014.

Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending Order 20, filed 7/31/74)

WAC 352-44-020 Recreational conveyances—Certification. Each conveyance for persons generally engaging in winter sports recreational activities, as described in RCW ((~~70.88.010~~)) 79A.40.010, shall have a current ((~~annual~~)) seasonal certificate to operate on a form approved and provided by the commission. Said certificate ((~~shall be for an annual term of one year beginning January 1 of each year~~)) covers either winter or summer. Additional inspections may be made as deemed necessary by the director. No conveyance shall be operated for use by the public unless a valid current certificate has been issued by the director. The certificate shall be:

(1) Signed by the director.

(2) Posted in a conspicuous location at the main loading terminal during periods of operation for public use.

(3) Adequately protected from the elements.

NEW SECTION

WAC 352-44-130 Fees, inspection and plan review. To cover the costs of implementing the commission's responsibilities under chapters 79A.40 and 79A.45 RCW and as outlined in this chapter, the commission has adopted the following schedule of fees. The owner or operator of the ski area equipment shall pay the commission the following costs and fees:

(1) The actual costs incurred by the commission to retain an inspector to inspect, review plans, and file a report on recreational devices connected with the recreational conveyance operation; and

(2) An administrative fee, not to exceed twenty-eight percent of the actual costs incurred by the commission in subsection (1) of this section, to defray the commission's administrative costs associated with this program.

The director shall invoice the owner/operator for the costs incurred, which invoice shall be paid within thirty days of receipt. The director shall have the ability, at his/her sole discretion, to lower or waive an administrative fee if the director deems it appropriate.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 352-44-050	Recreational conveyances—Safety inspections.
WAC 352-44-080	Recreational conveyances—Simulated load test.

WSR 14-20-046
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed September 24, 2014, 4:09 p.m., effective October 25, 2014]

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

Purpose: New rules are needed to clarify new legislation that passed in the 2014 legislative session.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 14-16-117 on August 6, 2014.

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

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

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

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

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

Date Adopted: September 24, 2014.

Sharon Foster
Chairman

NEW SECTION

WAC 314-38-070 Class 16 day spa permit. (1) "Day Spa" is defined as a business that offers at least three of the following four service categories:

(a) Hair care (haircut, hair color, perms, etc.);

(b) Skin care (facials, makeup application);

(c) Nail care (manicure, pedicure); and

(d) Body care (massage, wraps, waxing).

(2) The holder of a Class 16 day spa permit may offer complimentary wine or beer by the individual glass under the following conditions:

(a) Customers must be at least twenty-one years of age;

(b) Spa services must last more than one hour;

(c) A customer may consume no more than one six ounce glass of wine or one twelve ounce glass of beer per day;

(d) Employees involved in the service of wine or beer must complete a board-approved limited alcohol server training program;

(e) Permit holders may not advertise the service of complimentary wine or beer;

(f) Wine and beer must be purchased from a Washington state licensed retailer;

(g) The permit must be posted in a conspicuous area at the point of sale; and

(h) At least three of the service area categories must be in separate areas of the spa.

(3) The board has the right to inspect the premises and business records at any time.

(4) The annual fee for this permit is one hundred twenty-five dollars.

(5) Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit.

WSR 14-20-047
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed September 24, 2014, 4:10 p.m., effective October 25, 2014]

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

Purpose: New rules are needed to clarify new legislation that passed in the 2014 legislative session.

Statutory Authority for Adoption: RCW 66.24.145, 66.08.030.

Adopted under notice filed as WSR 14-16-115 on August 6, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3 [0], Amended 0 [4], Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3 [0], Amended 0 [4], Repealed 0.

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

Date Adopted: September 24, 2014.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-28-005 Definitions. The following definition applies to distilleries.

"Craft distillery" means any distillery licensed under RCW 66.24.145 and located in the state of Washington.

"Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-030 ((~~Changes to the distiller and craft distiller license.~~)) What does a distillery allow? (1) ((~~Beginning March 1, 2012, all distilleries licensed under RCW 66.24.140 and 66.24.145 may sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington.~~

~~(2) Beginning June 1, 2012, a distiller may sell spirits of its own production to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present at the licensed premises.~~)) A distillery license allows the licensee to:

(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;

(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;

(c) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery.

(i) Samples may be altered with ice or water only.

(ii) The maximum total per person per day is two ounces.

(iii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(2) Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(3) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(4) The contractor and contractee are required to obtain any federal approvals.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

(a) Produce ((~~sixty~~)) one hundred fifty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. ((~~A licensee may sell no more than two liters per customer per day.~~)) A craft distiller may not sell liquor products of someone else's production;

(c) ((~~For sales on or after March 1, 2012,~~)) Sell spirits of its own production to a licensed spirits distributor;

(d) ((~~For sales on or after March 1, 2012,~~)) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;

(e) Sell to out-of-state entities;

(f) Provide, free ((~~of~~)) or for a charge, samples of spirits of its own production to persons on the distillery premises.

(i) Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day.

(ii) Samples ((~~must be unaltered, and~~)) may be altered with ice or water only.

(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.

(iv) Samples must be in compliance with RCW 66.28.040;

(g) Provide((~~, free of charge,~~)) samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

(h) Contract produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may ((~~not sell directly to in-state retailers or in-state distributors until March 1, 2012~~)) add a spirits, beer, and wine restaurant license at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-055 What are the requirements for contract production by craft distilleries? (1) This section clarifies the language for contract production found in RCW 66.24.145. For the purposes of this section, contract production is when one craft distillery, referred to as the "contractor," produces distilled spirits for ((~~a distillery licensed under RCW 66.24.140, manufacturers licensed under RCW 66.24.150, wine growers licensed~~)) and sells contract distilled spirits to holders of distillers' or manufacturers' licenses including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as RCW and WAC allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(2) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(3) The contractor and contractee are required to obtain any federal approvals.

(4) Maintaining qualification as a craft distillery. Each craft distillery, whether in the capacity of a contractor or con-

tractee, is allowed to produce ((~~sixty~~)) one hundred fifty thousand gallons or less of total product per year. Total product, in this instance, includes:

(a) Product owned and produced by the craft distillery;

(b) Product owned and produced by the craft distillery for export from the state;

(c) Product owned by the craft distillery but produced by another craft distillery;

(d) Product produced by the craft distillery on behalf of another craft distillery;

(e) Product produced by the craft distillery under contract for another distillery, manufacturer, or grower.

(5) Reporting and recordkeeping.

(a) The contractor must include all product produced including contract production when it reports its monthly production to the board.

(b) The contractee must include the product contract produced by another craft distillery when the contractee reports its monthly production to the board.

(c) The contractor's and the contractee's recordkeeping documents must include the product information for each contract. The information must show the quantities produced.

WSR 14-20-048
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed September 24, 2014, 4:11 p.m., effective October 25, 2014]

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

Purpose: New rules are needed to clarify new legislation that passed in the 2014 legislative session.

Statutory Authority for Adoption: RCW 66.24.680.

Adopted under notice filed as WSR 14-16-116 on August 6, 2014.

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

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

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

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

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

Date Adopted: September 24, 2014.

Sharon Foster
Chairman

NEW SECTION

WAC 314-02-114 What is a senior center license? (1) A senior center license can only be issued to a nonprofit organization whose primary service is providing recreational and social activities for seniors on the licensed premises.

(2) The senior center license permits the sale of spirits by the individual glass, including mixed drinks and cocktails mixed on the premises only, beer and wine, at retail for consumption on the licensed premises.

(3) To qualify for the senior center license, the applicant must:

(a) Be a nonprofit organization under RCW 24.03.005;

(i) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(ii) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(iii) "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(b) Only serve alcohol between the hours of 6 a.m. and 2 a.m.; and

(c) Provide limited food service anytime alcohol is sold. Limited food service means foods such as:

(i) Appetizers;

(ii) Sandwiches;

(iii) Salads and soups;

(iv) Pizza;

(v) Hamburgers; and

(vi) Fry orders.

(4) Alcohol may be sold and served at the following types of events:

(a) Events hosted by the senior center; and

(b) Private events where the facility is rented by a private party for an event such as a wedding reception, family reunion, etc.

(5) If minors are allowed on the premises, floor plans must meet the requirements in WAC 314-02-025.

(6) All alcohol servers must have a valid mandatory alcohol server training permit.

(7) The annual fee for this license is seven hundred twenty dollars.

WSR 14-20-050
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed September 25, 2014, 8:13 a.m., effective October 26, 2014]

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

Purpose: The proposed changes establish certification standards for new seed crops being certified in Washington, align other standards with nationally established standards, update labeling and certification standards and take care of housekeeping items.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-005, 16-301-010, 16-301-011, 16-301-015, 16-301-025, 16-301-030, 16-301-045, 16-301-050, 16-301-055, 16-301-095, 16-301-120, 16-301-245, 16-301-250, 16-301-255, 16-301-260, 16-301-270, 16-301-280, 16-301-490, 16-301-495, 16-301-500, 16-301-505, 16-301-510, 16-301-515, 16-301-520, 16-301-525, 16-301-530, 16-301-535, 16-301-540, 16-301-545, 16-301-550, 16-301-555, 16-

301-560, 16-301-565, 16-301-570, 16-301-575, 16-301-580, 16-302-010, 16-302-030, 16-302-040, 16-302-050, 16-302-055, 16-302-060, 16-302-070, 16-302-080, 16-302-085, 16-302-090, 16-302-091, 16-302-100, 16-302-105, 16-302-110, 16-302-125, 16-302-130, 16-302-135, 16-302-140, 16-302-150, 16-302-155, 16-302-170, 16-302-210, 16-302-215, 16-302-220, 16-302-245, 16-302-260, 16-302-275, 16-302-320, 16-302-385, 16-302-395, 16-302-410, 16-302-415, 16-302-445, 16-302-460, 16-302-465, 16-302-470, 16-302-475, 16-302-480, 16-302-485, 16-302-490, 16-302-495, 16-302-525, 16-302-555, 16-302-560, 16-302-660, 16-302-665, 16-302-680, 16-302-685, 16-302-690, 16-302-740, and 16-302-755.

Statutory Authority for Adoption: For WAC 16-301-245, 16-301-250, 16-301-255, 16-301-260, 16-301-270, 16-301-280, 16-301-490, 16-301-495, 16-301-500, 16-301-505, 16-301-510, 16-301-515, 16-301-520, 16-301-525, 16-301-530, 16-301-535, 16-301-540, 16-301-545, 16-301-550, 16-301-555, 16-301-560, 16-301-565, 16-301-570, 16-301-575, 16-301-580 is RCW 15.49.005, 15.49.081, 15.49.310, 15.49.370(3), and 17.24.021; for all other sections is RCW 15.49.005, 15.49.081, 15.49.310, and 15.49.370(3).

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-16-036 on July 28, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 16, Amended 15, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 16, Amended 89, Repealed 0.

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

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

Date Adopted: September 25, 2014.

Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 06-17-041, filed 8/8/06, effective 9/8/06)

WAC 16-301-005 General seed standards—Definitions. Definitions for terms used in this chapter and in chapters 16-302 and 16-303 WAC may be found in chapter 15.49 RCW, seed. For the purposes of these chapters, the following definitions shall apply unless otherwise provided for in law or rule:

"Agricultural seed" as defined in RCW 15.49.011(2) includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combination of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

"AOSA" means the Association of Official Seed Analysts.

"AOSCA" means the Association of Official Seed Certifying Agencies.

"Approved trial grounds" means a specific parcel of land approved by the director for experimental or limited production or increase of bean seed.

"Arbitration committee" means the committee established by the director under RCW 15.49.101 to hear and make determinations in mandatory, nonbinding, arbitration cases.

"Bean" means common beans and adzuki beans.

"Blend" as defined in RCW 15.49.011(3) means seed consisting of more than one variety of a species, each in excess of five percent by weight of the whole.

"Blending" as related to this chapter shall be the process of commingling two or more lots of seed to form one lot of uniform quality.

"Buyer" means a person who purchases seeds.

"Certifying agency" as defined in RCW 15.49.011(6) means:

(a) An agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

"Chairperson" means the person selected by the arbitration committee from among their numbers to preside.

((~~**"Certifying agency"** as defined in RCW 15.49.011(5) means:~~

~~(a) An agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or~~

~~(b) An agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.~~))

"Common bean" means *Phaseolus vulgaris L.*

"Complete record" means information which relates to the origin, treatment, germination and purity (including variety) of each lot of seed. Records include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, treatment, handling, storage, analyses, tests and examinations.

"Dealer" as defined in RCW 15.49.011((~~(7)~~)) (9) means any person who distributes seeds.

"Department" as defined in RCW 15.49.011((~~(8)~~)) (10) means the Washington state department of agriculture or its duly authorized representative.

"Director" as defined in RCW 15.49.011((~~(9)~~)) (11) means the director of the department of agriculture.

"Field standards" means the tolerances permitted as determined by established field inspection procedures.

"Fiscal year" means the twelve-month period July 1 through June 30.

"Flower seeds" as defined in RCW 15.49.011(((~~11~~))) (13) include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold as flower seeds in this state.

"Germination" as defined in RCW 15.49.011(((~~13~~))) (15) means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

"Interagency certification" means the participation of two or more official certifying agencies in performing the services required to certify the same lot or lots of seed.

"Isolation standards" means the distance in feet from any contaminating source (i.e., distance from other fields of same species).

"Label" as defined in RCW 15.49.011(((~~18~~))) (21) includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by chapter 15.49 RCW, and may include other information including the requirement for arbitration.

"Land standards" means the number of years that must elapse between the destruction of a stand of a kind, and establishment of a stand of a specified class of a variety of the same kind (i.e., number of years out of production of same crop kind).

"Mixture, mixed or mix" as defined in RCW 15.49.-011(((~~22~~))) (24) means seed consisting of more than one species, each in excess of five percent by weight of the whole.

"Nursery" means an area of two acres or less in which grass for seed production is seeded in rows with twenty-four inch minimum spacing to facilitate roguing.

"O.E.C.D." means the Organization for Economic Cooperation and Development certification scheme.

"Off-type" means a plant or seed which deviates in one or more characteristics from that which has been described as being usual for the strain or variety.

"Official certificate" means a document issued by an official testing agency including but not limited to seed certification tags, bulk seed certification certificates, phyto-sanitary certificates, laboratory sanitary certificates, and other letters, tags, stamps, or similar documents certifying seed quality or condition.

"Official sample" as defined in RCW 15.49.011(((~~23~~))) (25) means any sample taken and designated as official by the department.

"Official seed laboratory" means a seed testing laboratory approved by the director, such as, but not limited to, Washington State Seed Laboratory, 21 N 1st Avenue, Yakima, Washington; and Oregon State Seed Laboratory, Oregon State University, Corvallis, Oregon. ((~~This definition is to include any laboratory that has an accreditation process in place.~~))

"Origin" means the county within the state of Washington, or the state, territory, or country where a specific seed lot was grown.

"Person" as defined in RCW 15.49.011(((~~26~~))) (27) means an individual, partnership, corporation, company, association, receiver, trustee or agent.

"Proprietary variety" means that crop variety for which a person has exclusive production and/or marketing rights.

"Representative sample" means a sample drawn in accordance with sampling procedures adopted in WAC 16-301-095.

"Seeds" as defined in RCW 15.49.011(((~~33~~))) (35) means agricultural or vegetable seeds, or other seeds as determined by rules adopted by the department.

"Seed labeling permit" means a permit issued by the department pursuant to RCW 15.49.400 to a person labeling seed for distribution in this state.

"Seed program advisory committee" means a committee of representatives from the small grains, pea, lentil, bean, vegetable, small seeded legumes, and grass seed industries selected by the program manager in consultation with the industry.

"Seed standards" means the tolerances permitted as determined by established seed inspection procedures.

"Serology" means precipitation, agglutination, immunodiffusion, or labeled antibody test methods (such as ELISA) that use the specificity of antigen-antibody reactions to detect and identify antigenic substances and the organisms such as viruses and bacteria that carry viruses.

"Stock seed" means breeders, prebasic, or like initial generation of seed.

"Sudangrass" means *Sorghum bicolor x drummondii*.

"University" means the Washington State University.

"USDA" means the United States Department of Agriculture.

"Vegetable seeds" as defined in RCW 15.49.011 (((~~38~~))) (40) include the seeds of all crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

"WSCIA" means the Washington State Crop Improvement Association.

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-301-010 ((~~What~~)) Publications ((~~are~~)) adopted in chapters 16-301, 16-302, and 16-303 WAC ((~~and where can they be obtained?~~)). (1) The department adopts the 2013 AOSCA rules and procedures for certification ((~~adopted in the year 2003. A copy may be obtained by writing; AOSCA, 600 Watertower Lane, Suite D, Meridian, Idaho 83642-6286~~)).

(2) The department adopts the 2013 AOSA rules for testing seed ((~~adopted in the year 2003. A copy may be obtained by contacting the administrative office for AOSA at McBride and Associates, Inc., P.O. Box 80705, Lincoln, NB 68501-0705~~)).

(3) The department adopts the Federal Seed Act and Code of Federal Regulations (C.F.R.) Part 201 as revised January ((~~1, 1998. A copy may be obtained by writing to the USDA, AMS, Washington, D.C. 20250~~)) 6, 2014.

Copies of these documents can be obtained by contacting the department's seed program by calling 509-249-6950.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-011 ((~~What are the~~)) Functions of the seed program advisory committee((~~?~~)). The seed program advisory committee shall meet at least annually and make recommendations to the department regarding the objectives of the seed program. The review should include a review of the regulatory activities and program expenditures.

AMENDATORY SECTION (Amending WSR 11-19-014, filed 9/8/11, effective 10/9/11)

WAC 16-301-015 Seed labeling requirements for agricultural, vegetable, and flower seeds. (1) Each container of agricultural, vegetable or flower seeds, that is sold, offered or exposed for sale, or transported within this state for sowing purposes, must bear or have attached to the container a plainly written or printed label or tag in the English language; and

(a) The label provides information required in WAC 16-301-060 through 16-301-085 on treated seeds in addition to the information required in subsection (2) of this section; and

(b) The label is placed in a conspicuous manner on the seed container; and

(c) The printed label or tag is not modified or denied in the labeling or on any label attached to the seed container.

(2) Each container of agricultural, vegetable, or flower seeds((~~, that is~~)) sold, offered or exposed for sale, or transported within this state for sowing purposes must bear "*Requirement for arbitration - The Washington State Seed Act, chapter 15.49 RCW, requires mandatory arbitration of disputes involving allegedly defective seed. See chapter 16-301 WAC or contact the Washington State Department of Agriculture, Seed Program, 509-249-6950,*" on:

(a) The analysis tag; or

(b) A separate tag or label attached securely to each container; or

(c) Printed in a conspicuous manner on the side of each container; or

(d) Alternate wording may be approved in writing by the department to meet the needs of the industry.

(3) Except for grass seed mixtures, and hybrids that contain less than ninety-five percent hybrid seed, the label for agricultural seeds must contain the following information:

(a) The name of the kind and variety of each agricultural seed present in excess of five percent of the whole and the percentage by weight of each or if the variety is not listed with the certifying agency, the name of the kind and the words, "*variety not stated*." Hybrids must be labeled as hybrids; and

(b) The lot number or other lot identification; and

(c) The origin state or foreign country, if known. If the origin is not known, that fact shall be stated on the label; and

(d) The percentage, by weight, of all weed seeds present. The maximum weed seed content may not exceed two percent by weight; and

(e) The name and rate of occurrence in seeds per pound of each kind of restricted noxious weed seed present; and

(f) The percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label; and

(g) The percentage by weight of inert matter; and

(h) The percentage of seed germination, exclusive of hard seed, and the percentage of hard seed, if present, or "total germination and hard seed" as a single percentage; and

(i) The calendar month and year the seed germination test was completed to determine such percentages; and

(j) The name and address of the person who labels, sells, offers, or exposes for sale seed within this state.

(4) For seed that is coated the label must also contain the following:

(a) The percentage of pure seed with coating material removed;

(b) The percentage of coating material shown as a separate item in close association with the percentage of inert material;

(c) The percentage of germination as determined on four hundred coated seed pellets, with or without seeds.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

WAC 16-301-025 Special requirements for labeling of vegetable and flower seed as prepared for use in the home. In addition to the information required on the label in WAC 16-301-015, the following requirements also apply to vegetable and flower seed as prepared for use in home:

(1) **Vegetable seeds in packets or preplanted devices -** Labeling for vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices must include the following information:

(a) The year in which the seed was packed for sale as "packed for planting in …" or the percentage germination and the calendar month and the year the test was completed to determine that percentage;

(b) Label for seeds which germinate less than the standard established in WAC 16-301-090 must include the following:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The words "below standard" in not less than eight-point type;

(c) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quality of seed without removing the seed from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

(2) Vegetable seeds in containers - The labeling requirements for vegetable seeds in containers, other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices, ((~~is~~)) are considered met if the seed is weighed from a properly labeled container of more than one pound in the presence of the purchaser.

(3) Flower seeds in packets or preplanted devices - Labeling for flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices must include the following information:

(a) For all kinds of flower seeds:

(i) The name of the kind and variety or a statement of the kind and performance characteristics as prescribed in chapter 15.49 RCW and rules adopted thereunder;

(ii) The calendar month and year the seed was tested or the year for which the seed was packaged;

(b) Labels for seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard established under the provisions of chapter 15.49 RCW must include the following:

(i) The percentage of germination exclusive of hard seeds;

(ii) The words "below standard" in not less than eight-point type.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-030 Exemptions for small grain, chickpea, field pea, lentil and/or soybean seed. (1) Small grain, chickpea, field pea, lentil, and/or soybean seed distributed in packaged form to a wholesaler or a commercial grower for the grower's own use and accompanied by an invoice or other document containing the labeling information required in this chapter may attach labels containing information required in treated seed label requirements listed in WAC 16-301-060 through 16-301-085; and the net weight of the seed if the purchaser has knowledge of, and consents to, the invoice labeling. Small grain seed labels must also contain information in WAC 16-301-020 (1)(a).

(2) With the exception of PVP Title V varieties that are required to be sold as a class of certified seed, when small grain, chickpea, field pea, lentil, and/or soybean seed is needed for immediate planting, a purchaser may waive the seed analysis information requirement for the purchase by completion of the following waiver:

CUSTOMER WAIVER AFFIDAVIT
THIS WAIVER MUST NOT BE USED FOR PVP TITLE V VARIETIES

Date . . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

(Seed Dealer's Name and Address)

I, ..., because of an emergency need for ..... seed, am waiving my rights as provided in RCW 15.49.021 to receive the germination and purity information required in chapter 16-301 WAC on lot(s) ..... purchased on .....: Provided, That within thirty days, ... the supplier provides the above information to me in writing.

. . . . . .

(Customer's Signature)

AMENDATORY SECTION (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

WAC 16-301-045 Prohibited noxious weed seeds. Prohibited noxious weed seeds are the seeds of weeds which when established are highly destructive, competitive and/or difficult to control by cultural or chemical practices. Seed is deemed mislabeled if the seed consists of or contains any of the prohibited noxious weed seeds listed below. For the purpose of seed certification, see WAC 16-302-100 for the list of prohibited noxious weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Austrian fieldcress	*Rorippa austriaca* ~~*(((Crantz) Bess.))*~~
Field bindweed	*Convolvulus arvensis* ~~*((L.))*~~
Hedge bindweed	~~*((Convolvulus sepium L.))*~~ *Calystegia sepium*
Bladder campion (only in timothy- *Phleum pratense*)	*Silene vulgaris*
Camelthorn	*Alhagi maurorum*
Canada thistle	*Cirsium arvense* ~~*((L.) Scop.))*~~
Hairy whitetop	*Lepidium appelianum*
Hoary cress	*Lepidium draba*
Jointed goatgrass (only in small grain)	*Aegilops cylindrica*
Knapweed complex (including bighead,	*Centaurea macrocephala,*
Vochin,	*Centaurea nigrescens,*
black,	*Centaurea nigra,*
brown,	*Centaurea jacea,*
diffuse,	*Centaurea diffusa,*
meadow,	*Centaurea* ~~*((jacea x nigra))*~~ *x moncktonii,*
Russian,	*Rhaponticum repens,*
spotted knapweeds	*Centaurea stoebe* subsp. *australis,*
Purple starthistle)	*Centaurea calcitrapa*
Leafy spurge	*Euphorbia esula* ~~*((L.))*~~
Lepyrodiclis	*Lepyrodiclis holosteoides*
Perennial pepperweed	*Lepidium latifolium* ~~*((L.))*~~
Perennial sowthistle	*Sonchus arvensis* ~~*((L.))*~~
Quackgrass	*Elymus repens*
Serrated tussock	*Nassella trichotoma*

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Silverleaf nightshade	*Solanum elaeagnifolium*
Sorghum perennial such as, but not limited to, johnsongrass, sorghum almum, and perennial sweet sudangrass	*Sorghum* spp.
Tansy ragwort	*Jacobaea vulgaris*
Velvetleaf	*Abutilon theophrasti*
White cockle (only in timothy-*Phleum pratense*)	*Silene latifloia*
Yellow-flowering skeleton weed	*Chondrilla juncea ((~~L.~~))*
Yellow starthistle	*Centaurea solstitialis ((~~L.~~))*

AMENDATORY SECTION (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

WAC 16-301-050 Restricted noxious weed seeds. Restricted (secondary) noxious weed seeds are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices. Seed is deemed mislabeled if it consists of or contains any of the restricted noxious weed seeds listed below in excess of the number declared on the label. For the purpose of seed certification, see WAC 16-302-105 for the list of objectionable weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass or slender foxtail	*Alopecurus myosuroides*
Black mustard	*Brassica nigra*
Blue lettuce	*Lactuca tatarica* subsp. *pulchella*
Docks and Sorrel	*Rumex spp.*
Dodder	*Cuscuta spp.*
Dyers woad	*Isatis tinctoria*
Field pennycress (fanweed)	*Thlaspi arvense*
Field sandbur	*Cenchrus ((~~incertus~~)) spinifex*
Gromwell (only in small grain)	*Buglossoides arvensis*
Halogeton or clustered barilla salt	*Halogeton glomeratus ((~~C.A. Mey.~~))*
Medusahead	*Taeniatherum caput-medusae*
Plantains	*Plantago* spp.
Poverty weed	*Iva axillaris ((~~Pursh.~~))*Pursh
Puncturevine	*Tribulus terrestris ((~~L.~~))*
St. Johnswort	*Hypericum perforatum ((~~L.~~))*
Dalmation toadflax	*Linaria dalmatica ((~~(L.) Mill.~~))*
Yellow toadflax	*Linaria vulgaris ((~~Hill.~~))*
Western ragweed	*Ambrosia psilostachya ((~~DC.~~))*
Wild mustard	*Sinapis arvensis* subsp. *arvensis*
Wild oat	*Avena fatua ((~~L.~~))*
Wild radish	*Raphanus raphanistrum*

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-301-055 Tolerances for seed law enforcement. Tolerances for seed law enforcement shall be in accord with the code of federal regulations, C.F.R. Title 7, Section 201 as revised ((~~January 1, 1998~~)) February 25, 2014 and/or those adopted by the Association of Official Seed Analysts, as amended on October 1, ((~~2003~~)) 2013, except for the tolerances for prohibited noxious and restricted noxious weed seed which shall be as the Washington state seed law specifies for labeling.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-095 Sampling—Administration of the Washington State Seed Act. (1) The official sampling procedure for sampling all seed is as follows:

(a) In order to secure a representative sample, equal portions must be taken from evenly distributed parts of the quantity of seed to be sampled. Access must be allowed to all parts of that quantity.

(b) For free-flowing seed in bags or bulk, a probe or trier is used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag or container must be used.

(c) Nonfree-flowing seed, such as certain grass seed, uncleaned seed, or screenings, difficult to sample with a probe or trier, are sampled by thrusting the hand into the bulk and withdrawing representative portions.

(d) Composite samples must be obtained to determine the quality of a lot of seed, such as the percentages of pure seed, other crop seed, weed seed, inert matter, noxious weed seed, germination, varietal purity, freedom from disease, and effectiveness of seed treatment. Individual bag samples may be obtained to determine whether the seed is of uniform quality.

(2) Sampling equipment. The trier must be designed so that it will remove an equal volume of seed from each part of the bag through which the trier travels. Unless the trier has partitions in the seed chamber, it must be inserted into the bags horizontally.

(3) Obtaining representative samples.

(a) For lots of one to six bags, sample each bag and take a total of at least five cores or handsfull.

(b) For lots of more than six bags, sample five bags plus at least ten percent of the number of bags in the lot. (Round numbers with decimals to the nearest whole number.) Regardless of the lot size, it is not necessary to sample more than thirty bags.

Examples:

No. bags in lots	7	10	23	50	100	200	300	400
No. bags to sample	6	6	7	10	15	25	30	30

(c) For sampling bulk seed to obtain a composite sample, take at least as many cores or handsfull as if the same quantity of seed were in bags of an ordinary size. Take the cores or handsfull from well-distributed points throughout the bulk.

(d) Seed in small containers must be sampled by taking entire unopened container in sufficient numbers to supply a minimum size sample as required ((~~in subsection (4) of this section~~)) by the AOSA rules for testing seed. The contents of a single container or the combined contents of multiple containers of the same lot must be considered representative of the entire lot of seed sampled.

(((~~(4) Minimum weights of seed samples are defined in chapter 16-303 WAC, Schedule of testing, certification and other fees.~~)))

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-120 Arbitration committee. The director shall create a seed arbitration committee composed of five members, including the director, or a department of agriculture employee as his or her designee, and four members. Four alternates shall also be appointed by the director according to the requirements of RCW 15.49.111.

(1) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(2) The arbitration committee shall elect a chairperson and a secretary from among its members.

(a) The chairperson shall conduct meetings and deliberations of the committee and direct its other activities.

(b) The secretary shall keep accurate records of all meetings and deliberations and perform other duties as assigned by the chairperson.

(3) The committee shall be called into session at the direction of the director or the chairperson.

(4) The members of the committee shall receive no compensation for their duties but shall be reimbursed for travel expenses according to established state travel and per diem rates. Expense reimbursement shall be borne equally by the parties to the arbitration.

(5) A committee member, delegated with investigative responsibilities outside of the hearing under WAC ((~~16-318-395~~)) 16-301-185, may not participate in making the final decision and award.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-245 Annual bluegrass quarantine—Establishing quarantine. The seeds of the weed known as annual bluegrass, *Poa annua* and its known strains, hereinafter referred to as annual bluegrass, are objectionable in turf grass seed; therefore, an annual bluegrass quarantine is established to prevent the introduction of annual bluegrass into grass seed production areas, to control seed stocks to be planted for further seed increase, and to assure grass seed growers of a source of seed stock for planting purposes which is tested for presence of annual bluegrass.

AMENDATORY SECTION (Amending WSR 04-06-019, filed 2/23/04, effective 3/26/04)

WAC 16-301-250 Annual bluegrass quarantine—Definitions. Definitions for terms in this chapter may be found in chapter 15.49 RCW and WAC 16-301-005, except for the purposes of WAC 16-301-255 through 16-301-295, the following definitions shall apply:

(1) "Annual bluegrass" means *Poa annua* and all related subspecies and hybrids.

(2) "Seed stock" means those seeds of turf type grasses which are to be planted for seed increase or with intent of seed increase.

(3) "Annual bluegrass analysis certificate" means a test report from an official seed laboratory showing freedom from annual bluegrass based on a ten gram sample for bentgrass or redtop; and a twenty-five gram sample for other turf type grasses.

(((~~(4) "Quarantine tag" means a tag issued by Washington state department of agriculture to be sealed to each bag showing said seed has met quarantine requirements.~~)))

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-255 Annual bluegrass quarantine—Regulated area. Areas regulated under the annual bluegrass quarantine include all areas of the state of Washington lying east of the Cascade Crest, excluding Klickitat County and the portion of Benton County south of Interstate 82.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-260 Annual bluegrass quarantine—Quarantine area. Areas quarantined under the annual bluegrass quarantine include all areas of the state of Washington lying west of the Cascade Crest, Klickitat County and the portion of Benton County south of Interstate 82 in Eastern Washington and all areas outside of the state of Washington.

AMENDATORY SECTION (Amending WSR 04-06-019, filed 2/23/04, effective 3/26/04)

WAC 16-301-270 Annual bluegrass quarantine—Conditions governing movement of regulated articles. (1) No seed stock may be shipped, transported, moved within, or into the annual bluegrass quarantine regulated area unless such seed stock is accompanied by a test report from an official laboratory showing said seed stock is free of annual bluegrass on the basis of a minimum ten gram analysis for bentgrass and a minimum of twenty-five gram analysis for other grasses except that seed stock found to contain annual bluegrass may be planted in the regulated area if planted in a nursery under an inspection program as established by the state department of agriculture.

(2) This quarantine shall not apply to seed sown for forage or turf. This quarantine shall not apply to range, reclamation, or forage type seed production fields.

(3) This quarantine shall not apply to:

(a) Experiments or trial grounds of the United States Department of Agriculture;

(b) Experiments or trial grounds of Washington State University experiment station; or

(c) Trial grounds of any person, firm, or corporation; provided said trial ground plantings are approved by the director and under supervision of technically trained personnel familiar with annual bluegrass control.

(4) Any person shipping, moving or transporting any seed stock for planting purposes in or into the regulated area that is not ((~~tagged with official "annual bluegrass quarantine" tags or~~)) represented by a test report showing freedom of annual bluegrass as allowed in subsection (1) of this section must:

(a) State where and when seed stock can be sampled for the required annual bluegrass test; or

(b) Attach a copy of the official laboratory analysis showing freedom from annual bluegrass; or

(c) Submit a representative sample for testing.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-280 Annual bluegrass quarantine—Procedure for clearing. (((~~(1)~~))) Each person moving, shipping or transporting seed stock within or into the annual bluegrass quarantine regulated area must:

(((~~(a)~~))) (1) Submit an official laboratory analysis of a representative sample showing freedom from annual bluegrass; or

(((~~(b)~~))) (2) Submit a representative sample for testing.

(((~~(2) Upon receipt of an official laboratory analysis showing freedom from annual bluegrass, the department of agriculture shall tag each bag of those lots found free of annual bluegrass by the required test with "annual bluegrass quarantine" tag, stating said seed is eligible for planting in Eastern Washington.~~)))

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-490 ((~~Why is the department establishing a~~)) Crucifer seed quarantine((~~?~~)). The production of crucifer vegetable seed is an important industry in Washington state. The economic well-being of that industry is threatened by the introduction of crucifer seed infected with certain bacterial and fungal pathogens. In addition, certain crucifer species produce dormant seed that, if present in a seed lot will persist into subsequent cropping years. The resulting "volunteer" plants have the potential to become established as weeds in Washington state.

The director has determined that a quarantine is needed to protect the Washington crucifer vegetable seed industry from the introduction of seed infected with certain pathogens and from the introduction of crucifer seed containing dormant seed. The quarantine will provide the seed growers in this state with sources of crucifer seed that have been tested and proven to be free from harmful pathogens and, when appropriate, dormant seed.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-495 ((~~What~~)) Definitions ((~~are important to understanding this chapter?~~)). Definitions for some terms in this chapter can be found in chapter 15.49 RCW and chapter 16-301 WAC. In addition, the following definitions apply to this chapter:

"Approved treatment methods" include hot water, hot chlorine or any other methods that can eliminate the presence of regulated pathogens.

"Crucifer" means all plants in the family Brassicaceae (also known as Cruciferae) and specifically includes all *Brassica* species, *Raphanus sativus* - Radish, *Sinapis alba* and other mustards.

"Crucifer production" means any planting of crucifer seed or seedlings for the purpose of producing seed, oil, commercial vegetables or cover crops.

"Crucifer seed" includes any part of a plant capable of propagation including, but not necessarily limited to, seeds, roots, and transplants.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Dormant seed" means viable true seed that displays a delay in or lack of germination when provided favorable germination conditions for the type of seed in question.

"Owner" means the person having legal ownership, possession or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, grower, seed dealer, landowner or their agent.

"Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

"Regulated area" means those geographic areas that are protected from the introduction of specified plant pests by the provisions of this quarantine.

"Seed lot" means a designated quantity of seed that is uniquely identified by a lot number.

"Seed program" means the Washington state department of agriculture seed program.

"Trial ground" means a specific parcel of land approved by the director for experimental or limited production or increase of crucifer seed and for planting seed lots whose quantity of seed is insufficient to allow for pathological testing.

"True seed" means a mature fertilized ovule consisting of an embryo, with or without an external food reserve enclosed by a seed coat.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-500 ((What)) Crucifer articles ((are)) regulated by this chapter((?)). (1) With the exception of the exemptions listed in WAC 16-301-525(4), all crucifer seed, seedlings, roots, or transplants intended for seed production, oil production, commercial vegetable production or cover crop use are regulated under the provisions of this chapter.

(2) This chapter also regulates crop residue remaining from the harvest of infected crucifer plants.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-505 ((What diseases are)) Diseases regulated by this chapter((?)). (1) **"Regulated diseases"** means those bacterial and fungal diseases of crucifers listed in this section and any new variations or strains of these diseases.

(2) **"Regulated pathogens"** means those bacterial and fungal organisms identified as the casual agents for the diseases listed in this section.

(3) The following bacterial and fungal diseases of crucifers, and any new strains or variations of these diseases are regulated by this chapter:

Common Name	Scientific Name
Black leg of Crucifers	*Phoma lingam*
Black rot	*Xanthomonas campestris pv. campestris*

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-510 ((What)) Seed ((must undergo)) dormancy testing((?)). Any seed of a *Brassica* or *Sinapis* species whose primary uses for any nonvegetable use must be tested for the presence of dormant seed.

This testing must be done by either a single or paired germination test that demonstrates freedom of dormant seed.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-515 ((What is the quarantined area for this)) Crucifer seed quarantine((?))—Quarantined area. (1) The quarantine area for the crucifer seed quarantine includes all Washington state counties except Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

(2) Regulated articles imported into Washington state must comply with the regulations of this chapter before transport into the regulated area. No additional requirements apply within the quarantine area but all regulated articles transported into the regulated area must comply with the regulations of this chapter.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-520 ((What is the regulated area for this)) Crucifer seed quarantine((?))—Regulated area. The regulated area for this crucifer seed quarantine includes Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

AMENDATORY SECTION (Amending WSR 07-19-122, filed 9/19/07, effective 10/20/07)

WAC 16-301-525 ((What are the exemptions to the)) Crucifer seed quarantine ((that apply)) within the regulated area((?))—Exemptions. This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550((-));

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of regulated diseases as required in WAC 16-301-530; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated area if the seedlings are free of regulated diseases as required in WAC 16-301-530.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse((-));

(6) Seed lots with a maximum weight of five pounds that were in inventory prior to January 1, 2007.

AMENDATORY SECTION (Amending WSR 07-19-122, filed 9/19/07, effective 10/20/07)

WAC 16-301-530 ((What requirements apply to)) Planting crucifer seed in the regulated area((?))—Requirements. (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the regulated area.

(b) Any seed of a *Brassica* or *Sinapis* species planted or established in the regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the

regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the regulated area unless accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the seed program.

(b) Larger containers must bear a label issued by the seed program indicating that the seed is in compliance with this chapter.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-535 ((~~What requirements apply to~~)) Boxes and racks used to ship crucifer seedlings((~~?~~))—Requirements. (1) Only boxes that have not previously contained crucifer seedlings may be used for shipping transplants into or within a regulated area.

(2) Racks used to ship transplanted crucifer seedlings must be thoroughly disinfected with an appropriate sanitizer before the seedlings are shipped.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-540 ((~~What requirements apply to~~)) Crucifer transplants grown in greenhouses in the regulated area((~~?~~))—Requirements. (1) All crucifer transplants produced in greenhouses in the regulated area must be subjected to pest control procedures that reduce the presence of diseases or insects that may inhibit identifying regulated diseases.

(2) The interiors of greenhouses in the regulated area used to produce crucifer transplants must be free of crucifer weeds.

(3) One hundred meter buffers, free of crucifer weeds, must surround all greenhouses in the regulated area used to produce crucifer transplants.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-545 ((~~What requirements apply to~~)) Crucifer seed lots that test positive for any regulated disease((~~?~~))—Requirements. (1) If a crucifer seed lot tests positive for any regulated disease, the infected seed lot may be treated with an approved seed treatment.

(2) After treatment, the seed lot must be tested for the presence of regulated diseases using appropriate pathological testing methods.

(3) If the pathological testing yields negative test results, the seed lot will be considered in compliance with this chapter.

(4) It is a violation of this chapter to plant seed in the regulated area that tests positive for any regulated disease subsequent to any approved treatment method.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-550 ((~~If documentation verifying that crucifer seed is free from regulated diseases is not available, what protocols must be followed before the seed is planted in a regulated area?~~)) Planting seed in a regulated area—Protocols when certain documentation is unavailable. When no documentation exists verifying that a crucifer seed lot is free from regulated diseases, the following protocols must be followed before the seed is planted in the regulated area:

(1) A crucifer seed lot will be classified as a suspect seed lot if the seed lot lacks the documentation verifying that the lot complies with the crucifer seed quarantine requirements of this chapter.

(2) Suspect seed lots must:

(a) Not be offered for sale in the regulated area.

(b) Be treated by an approved treatment method.

(c) Be sown in a greenhouse and the seedlings must pass inspection by seed program inspectors before transplanting to the field.

(3) Any greenhouse operation used to grow crucifer seedlings for transplant must:

(a) Physically separate suspect seed lots from other crucifer production within that greenhouse.

(b) Monitor and document the location and identity of each suspect seed lot during production.

(4) It is a violation of this chapter for seedlings from a suspect seed lot to be topped, clipped, chopped or undergo any other treatment to toughen them or reduce their size.

(5) All seedlings from a suspect seed lot that exhibit symptoms of regulated diseases must be physically separated from asymptomatic transplants in that lot.

(6) Before shipping seedlings from a suspect seed lot, the seedlings must be inspected by seed program inspectors for the presence of regulated diseases.

(a) If no symptoms of regulated diseases are detected during this inspection, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the regulated area.

(b) If seedlings display symptoms of regulated diseases, laboratory testing for the diseases is mandatory.

(c) If seedlings from a suspect seed lot test negative for regulated pathogens after appropriate pathological testing, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the regulated area.

(d) If the presence of a regulated disease is confirmed by laboratory testing, all seedlings from a suspect seed lot may be subject to a quarantine order or destruction order under WAC 16-301-570.

(7) Any crucifer seed production fields, plant beds, or greenhouse production that will be planted with or receives production from suspect seed lots that are determined to be free from regulated diseases under subsection (6) of this section must be entered into the Washington state phytosanitary inspection program as required under WAC 16-301-235.

(8)(a) It is a violation of this chapter to plant seedlings from a suspect seed lot that tests positive for any regulated disease in the regulated area.

(b) Any suspect seed lot testing positive for any regulated disease may be subject to a quarantine order or a destruction order under WAC 16-301-570.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-555 ((~~How are~~)) Approved trial grounds ((~~established and what rules apply to them?~~)). (1) If a crucifer seed lot has not been tested to determine if it is disease free, and the quantity of seed in the lot is too small for testing to be practical, it must be planted in an approved trial ground that meets the requirements of the seed program.

(2) Trial grounds may be established for the purposes of, but not limited to, variety maintenance, variety development or other related research.

(3)(a) The seed program must approve a trial ground before it is established.

(b) Failure to obtain approval of a trial ground before it is established is a violation of this chapter and may subject the trial ground to a destruction order under WAC 16-301-570.

(4)(a) Trial grounds must be isolated from crucifer production crops according to the standards set in "*Seed Field Minimum Isolation Distances*" published by the Washington State University (WSU) cooperative extension.

(b) Copies of this publication can be obtained by contacting a WSU extension office.

(5) A person may plant crucifer seed in an approved trial ground after notifying the seed program, in writing, of their intent to plant for research purposes only. The notification will include an assurance that the person planting crucifer seed in an approved trial ground will comply with the inspection procedures in WAC 16-301-560, the isolation requirements prescribed by the WSU extension publication "*Seed Field Minimum Isolation Distances*," and any other requirements established by the director.

(6) The maximum planting in a trial ground is:

(a) One pound per variety for crucifer seed; and

(b) One-half acre for crucifer transplants.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-560 ((~~What are the~~)) Inspection requirements for trial grounds((~~?~~)). (1) Applications for the phytosanitary field inspection of a trial ground must be submitted to the department before September 1 of the year the trial ground is established.

(2) A minimum of two phytosanitary field inspections of a trial ground must be conducted. These inspections must take place:

(a) During the seedling stage; and

(b) At the bloom stage.

(3) The phytosanitary field inspection application must include:

(a) A detailed varietal planting plan;

(b) A description of the exact location of the trial ground;

(c) The manner in which the trial ground will be isolated from other known crucifer production; and

(d) The distance by which the trial ground is isolated from other known crucifer production.

(4) If the field inspections detect any regulated pathogens, the trial ground is subject to destruction upon the order of the director.

(5) A disinfectant must be applied to the:

(a) Machinery used in the production of the crucifer crop;

(b) Footwear of all persons entering the trial grounds; and

(c) Footwear of all persons before traveling from a trial ground to other crucifer fields.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-565 ((~~What are the~~)) Testing requirements for seed harvested from an approved trial ground((~~?~~)). (1) Seed harvested from an approved trial ground must be tested in an approved laboratory for the presence of regulated pathogens before it is planted in a regulated area.

(2) If the seed harvested from a trial ground tests positive for any regulated pathogens, it may not be released for general planting within a regulated area.

(3)(a) Seed harvested from a trial ground infected with a regulated pathogen must either be destroyed or shipped out of the regulated area.

(b) Written documentation of either the seed's destruction or shipment out of the regulated area must be submitted to the seed program within thirty days of the positive test for the regulated pathogen.

(c) Seed from a trial ground infected with a regulated pathogen that remains in a regulated area beyond thirty days may be subject to destruction upon the order of the director.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-570 ((~~What are the~~)) Penalties for violating the crucifer seed quarantine((~~?~~)). (1) When the director determines that crucifer seed or production is infected with a regulated disease, the director may issue a quarantine order or notice of destruction. A violation of this chapter may also result in either a quarantine order or notice of destruction as determined by the director and the rules regulating the crucifer quarantine. Any costs associated with complying with a notice of destruction or quarantine order is

the sole responsibility of the owner and not the responsibility of the department.

(2) The director may issue a notice of destruction:

(a) The notice of destruction will identify the property or seed lot affected.

(b) The notice of destruction will order the destruction of regulated articles or prescribe the terms of entry, inspection, partial destruction and/or treatment of regulated articles.

(c) The notice of destruction may prescribe control measures or other requirements needed to prevent the infection of adjacent properties with a regulated disease.

(d) To ensure that the affected parties comply with the measures required to eliminate a disease caused by regulated pathogens, the director will notify the owner and seed company representatives, if known, regarding the methods of destruction to be used, the extent of the destruction and the safeguards being implemented to prevent the spread of the disease.

(3) The director may order the quarantine of any regulated article or planting area. The director will:

(a) Determine the quarantine conditions;

(b) Determine if a quarantine extension is warranted; and

(c) Prescribe sanitary precautions that will prevent the spread of the suspected regulated disease.

(4) To prevent the spread of the suspected regulated disease, persons entering the quarantined area must follow the sanitary precautions in WAC 16-301-560(5). Entry into the quarantined area is restricted to:

(a) The owner;

(b) Department employees;

(c) University personnel or other plant pathology specialists; and/or

(d) Persons authorized in writing by the director.

(5) Fields placed under a quarantine order:

(a) Must enter the Washington state phytosanitary inspection program as required under WAC 16-301-235 with all inspection costs borne by the owner.

(b) May be subject to additional inspection, control, isolation, or destruction requirements if the director determines they are needed to prevent the spread of regulated pathogens.

(6) Any owner violating the requirements of this crucifer quarantine is subject to the civil and/or criminal penalties as established in chapters 15.49 and/or 17.24 RCW.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-575 ((~~How are~~)) Identification of diseased crucifer seeds and infected fields ((~~identified?~~)). (1) So that timely investigations may be made, all interested parties, including owners, seed company representatives, and university extension personnel are encouraged to promptly report any suspected infected crucifer fields to the seed program.

(2) Any crucifer crop infected with a regulated pathogen must be reported to the seed program within seventy-two hours after the regulated pathogen is discovered.

(3)(a) The seed program may conduct inspections and tests to determine infection of any crucifer seed or production with a regulated disease.

(b) If a WSDA plant services program plant pathologist and a qualified plant pathologist representing a commercial company or owner disagree over the presence of a regulated disease, the company or owner may request a verification test for a regulated pathogen. A university plant pathologist may recommend the verification test. The verification test must use accepted scientific and professional techniques and will be at the owner's expense.

(c) The affected planting area will be placed under quarantine for at least thirty days or until verification testing is completed.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-580 ((~~What regulations apply to~~)) Diseased crucifer seeds and infected fields((~~?~~))—Regulations. (1) When the director determines that a field is infected with a regulated pathogen and threatens to infect other fields, the director may issue a notice of destruction prescribing control measures or other requirements needed to prevent the infection of adjacent properties.

(2) Unless the crop is within two weeks of harvest, any crucifer crop within the regulated area that is infected with a regulated pathogen may be subject to immediate destruction, in part or in total. The owner is responsible for the expenses incurred to destroy a diseased crucifer crop.

(3) The following requirements apply to crops that are within two weeks of harvest:

(a) Residues must be destroyed or incorporated into the ground immediately after harvest;

(b) Harvested seed must be isolated from other seed lots until it is treated with hot water and/or chlorine seed treatments;

(c) Harvest equipment must be steam cleaned before entering any other fields; and

(d) WSDA personnel in consultation with WSU extension personnel must monitor these post-harvest activities.

AMENDATORY SECTION (Amending WSR 08-13-014, filed 6/6/08, effective 7/7/08)

WAC 16-302-010 Agencies that certify seed in Washington state. (1) Seed certification in Washington state is conducted under the authority of chapter 15.49 RCW. The department conducts seed certification in cooperation with the ((~~WSCIA~~)) Washington State Crop Improvement Association, Washington State University and ((~~AOSCA~~)) the Association of Official Seed Certifying Agencies.

(2) The ((~~WSCIA~~)) Washington State Crop Improvement Association is designated to assist the department in the certification of certain agricultural seeds. A memorandum of understanding between the department and the ((~~WSCIA~~)) Washington State Crop Improvement Association designates ((~~WSCIA~~)) the Washington State Crop Improvement Association to act as the director's duly authorized agent for the purpose of certifying seed of buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees((~~. The address and phone number for the WSCIA office is 1610 N.E. Eastgate Blvd. Suite 610, Pullman, WA 99163,~~

~~509-335-8250~~)), including conditioning plant inspections for these crops.

(3) The department's seed program certifies seed other than buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees. ((~~The address and phone number for the department seed program office is 21 N. 1st Avenue, Yakima, WA 98902, 509-249-6950.~~))

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-015 Seed classes recognized for seed certification. For the eligibility of varieties of seed refer to WAC 16-302-040. Four seed classes are recognized in seed certification, namely: Breeder, foundation, registered, and certified.

(1) Breeder seed is seed or vegetative propagating material directly controlled by the originating, or in certain cases the sponsoring plant breeder, institution, or firm. Breeder seed supplies the source for the initial and recurring increase of foundation seed. Breeder seed may also be used to produce subsequent generations.

(2) Foundation seed (identified by white tags) is first-generation seed increased from breeder seed or its equivalent. Production must be carefully supervised and approved by the certifying agency and/or the agricultural experiment station. Foundation seed is eligible to produce registered or certified seed.

(3) Registered seed (identified by purple tags) is the progeny of breeder or foundation seed that is handled as to maintain satisfactory genetic identity and purity and is approved and certified by the certifying agency. Registered seed is eligible to produce certified seed.

(4) Certified seed (identified by blue tags) is the progeny of breeder, foundation, registered or certified seed which is handled as to maintain satisfactory genetic identity and purity and is approved and certified by the certifying agency. Certified seed is not eligible for recertification ((~~for the crops certified by WSCIA, listed in WAC 16-302-550~~)), except as provided for in WAC 16-302-035.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-030 Standards for production of foundation seed. The general seed certification standards together with specific crop standards established in this chapter constitute the basic standards for production of foundation seed as deemed necessary by the certifying agency. Seed to be eligible for foundation certification tags, or OECD basic tags, must be approved by the originating plant breeder or his designated agent, and in compliance with the following standards:

(1) Preplanting report. A preplanting inspection, an industry responsibility, must be made of fields to be planted with breeder seed. A written report of the preplant inspection, performed by either a representative of the person issuing the contract or by the grower must be maintained by the variety owner or designee for a minimum of three years. The report shall show the grower's name, number of acres, location, crop history for the past three years, crops to be planted, origin of breeder seed, isolation status, and weed and crop present.

(2) Planting requirement. To distinguish between any possible volunteer and the crop seeded, all fields must be planted in distinct rows. Plants outside defined rows may be construed as volunteers.

(3) Combine inspection. The combine used for seed harvesting must be cleaned and inspected prior to harvesting foundation or OECD basic seed. The combine must be free of all contaminating material. If an official combine inspection is requested, the certifying agency must be notified of the following: The date, time, and location where the combine inspection may be made.

(4) Processing plant inspection. The processing or conditioning plant must be inspected before processing foundation or OECD basic seed and periodic inspections will be made during processing by the processor.

(5) Recleaning, rebagging, preinoculation, treating, or other processes must be approved by the certifying agency. An original tag must be submitted with the request for recertification and the seed must be retagged and resealed on completion.

(6) For a proprietary variety the above combine inspection (subsection (3) of this section), and processing plant inspection (subsection (4) of this section), responsibility may be assigned to the proprietor or his designee upon their request. The variety owner or designee must maintain a report covering required inspections.

AMENDATORY SECTION (Amending WSR 10-02-113, filed 1/6/10, effective 2/6/10)

WAC 16-302-040 Varieties eligible for seed certification in Washington state. (1) Only seed varieties that are accepted as meriting seed certification by an appropriate AOSCA National Variety Review Board or a member agency of AOSCA in accordance with the criteria listed in subsection ((~~(3)~~)) (2) of this section may be eligible for seed certification in Washington state.

(2) ((~~A current list of varieties eligible for certification for the crops certified by the seed program may be obtained by contacting WSDA Seed Program, 21 N. 1st Avenue, Yakima, WA 98902, 509-249-6950. A current list of varieties eligible for certification for the crops certified by WSCIA may be obtained by contacting WSCIA, 1610 N.E. Eastgate Blvd. Suite 610, Pullman, WA 99163, 509-335-8250.~~

~~(3)~~)) The following information is required for submission to an AOSCA National Variety Review Board or other certifying agency for acceptance of a seed variety for certification:

(((~~(a) A statement and supporting evidence by the originator, developer, or owner requesting certification that:~~

~~(i) The variety has been adequately tested to determine its value and probable area of adaptation, and that it merits certification; and~~

~~(ii) The variety is distinguishable from other varieties as set forth in Article 5, International Code of Nomenclature for Cultivated Plants, which reads as follows: "The term cultivar (variety) denotes an assemblage of cultivated individuals which are distinguished by any characters (morphological,~~

~~physiological, cytological, chemical or others) significant for the purposes of agriculture, forestry, or horticulture, and which, when reproduced (sexually or asexually) retain their distinguishing features."~~

~~(b) A statement on origin and breeding procedure.~~

~~(c) A description of:~~

~~(i) The morphological characteristics, (such as color, height, uniformity, leaf, head or flower characteristics, etc.);~~

~~(ii) Physiological characteristics;~~

~~(iii) Disease and insect reactions; and~~

~~(iv) Any other identifying characteristics of value to field inspectors and other pertinent factors as the breeder or sponsor considers relevant.~~

~~(d) Evidence of performance, including data on yield, insect or disease resistance and other factors supporting the value of the variety. Performance tests may be conducted by private seed firms or agricultural experiment stations, and must include appropriate check varieties, which are used extensively in the area of intended usage.~~)) (a) The name of the variety.

(b) A statement concerning the variety's origin and the breeding procedure used in its development.

(c) A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.

(d) Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

(e) A statement giving the suggested region of probable adaptation and purposes for which the variety is used. ((~~This includes where the breeder of the variety has tested the variety and anticipates recommending the merchandising of it.~~))

(f) A description of the procedure for maintenance of stock seed classes((~~. At the time a variety is accepted for certification, a sample lot of breeder seed is presented to the certifying agency. The sample is retained as a control varietal sample against which all future seed stock released for certified seed production may be tested to establish continued trueness of variety.~~)), including the number of generations through which the variety can be multiplied.

(g) A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

(h) Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand or other factors affecting genetic purity.

(i) A sample of the seed representative of the variety as marketed.

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-302-045 ((~~How may a person apply~~)) Applying for seed certification in Washington state((~~?~~)). ((~~If a person wishes~~)) To participate in the Washington state seed certification program, ((~~you must~~)) submit an application for seed certification to the appropriate certifying agency.

(1) An application for seed certification must be submitted for each crop, variety and field.

(2) Applications may be obtained from a certified seed processor or the certifying agency listed in WAC 16-302-010.

(3) The applicant is responsible for payment of all fees. Washington State University, its official agents and USDA Plant Material Center are exempt from paying fees on seed stock.

(4) The applicant must attach to the application for seed certification official tags/labels and/or other verification from seed stock planted. The applicant must also attach proof of quarantine compliance when required, under chapter 16-301 WAC. Refer to chapter 16-303 WAC for appropriate fees.

(5) When it is necessary for a grower to reseed due to a failure to get a stand, the grower will retain records of seed lots used and the date of reseeding. Reseeding must be done within two years of the original planting date for grasses or within one year for all other crops. If seed stock of a different lot is used for reseeding, the grower must submit proof of seed stock used on a seedling application form. An additional application fee will be charged.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-050 ((~~When is~~)) Submitting an application for seed certification ((~~submitted?~~)). (1) Seed certification application due dates are:

(a) For seed certified by the department: Alfalfa, clover, grasses and rapeseed (seedling applications) - Within sixty days of planting. Seedling applications will not be accepted if received more than one hundred five days after planting.

(b) Hybrid canola or hybrid rapeseed – Fall plantings February 1; Spring plantings – Twenty-one days after planting.

(c) Sunflower twenty-one days after planting.

(d) Notification of a seedling field to be harvested for certification the same year of planting is due July 31 with the required fees.

(i) Bean - July 1.

(ii) Corn - June 1.

(2) For seed certified by the WSCIA:

(a) ((~~Buckwheat,~~)) Field pea, chickpea, lentil, millet, and small grains (both winter and spring varieties) - June 1.

(b) Buckwheat and soybean - July 1.

(c) Sorghum - July 15.

(d) Forest tree seed certification - Refer to specific crop requirements in chapter 16-319 WAC.

(3) An application for seed certification must be submitted to the certifying agency each year a grower plans to produce seed for certification of annual crops (beans, peas, grain).

(4) A renewal application for seed certification must be submitted to the certifying agency after a stand is established each year that a grower plans to produce seed for certification of perennial crops (alfalfa, clover, grass). Due dates for renewal applications are as follows:

(a) Alfalfa and clover - June 15.

(b) Grass - May 1.

(5) Applications received after the due date are assessed a late application fee.

(6) No renewal application for seed certification may be accepted after the due date if a field inspection cannot be conducted prior to harvest except at the discretion of the certifying agency.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-055 ((~~What are the~~)) Responsibilities ((~~of a grower~~)) when participating in the seed certification program((~~?~~)). All ((~~growers participating~~)) participants in the seed certification program must:

(1) Maintain the genetic purity and identity ((~~of seed harvested and/or farm stored~~)) during seeding, growing, harvesting, and post-harvest storage, and ensure((~~s~~)) reasonable precaution is taken to control contaminating crops and varieties, noxious weeds, and seed-borne diseases.

(2) ((~~Exercise precaution to~~)) Prevent seed crop and lot mixture when harvesting.

(3) Identify the seed crop as it is delivered to the processor with the assigned field number or numbers.

(4) Clean the seed crop at a seed conditioner approved by the department under WAC 16-302-125. A list of approved seed conditioners may be obtained from the department seed program.

(5) Comply with standards and procedures for seed certification under the authority of chapter 15.49 RCW and rules adopted thereunder.

(6) Prior to planting, comply with the quarantine provisions under chapter 16-301 WAC.

(7) Harvest of seed before a field inspection by the certifying agency causes forfeitures of both the application and field inspection fees, and completion of certification.

(8) Failure of seed growers to comply with the seed laws and rules is cause for the department to deny certification of seed under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-060 ((~~What are the~~)) Certification requirements for seed((~~?~~)). (1) The general seed certification rules in addition to the rules adopted on specific seed crop standards constitute the certification requirements for the seed crops listed in this chapter.

(2) Crops approved for certification for which rules are not in effect may be certified under the minimum requirements for seed certification as shown in WAC 16-301-010. Fees for certification of seed shall be the most applicable fees established by the department in rule.

AMENDATORY SECTION (Amending WSR 10-08-029, filed 3/31/10, effective 5/1/10)

WAC 16-302-070 ((~~When is a~~)) Seed field ((~~inspected~~)) inspections by the certifying agency((~~?~~)). The certifying agency conducts field inspections as follows:

(1) A seedling field is inspected at the most appropriate time after receipt of seedling application. If the field produces seed the same year of planting, a seedling producing inspection is made prior to harvest.

(2) Each year a crop of certified seed is produced, field inspections are made at a time when factors affecting certification are most evident.

(3) The unit of certification is defined as the entire field standing at the time of inspection. A portion of a field may be certified if the area to be certified is clearly defined by flagging, stakes or other visual means. The border area of the field is considered the unit of certification if it is planted to the same crop and is inclusive of the acreage applied for.

(4) The unit of inspection may include areas adjacent to a field or areas of surveillance if these areas contain factors that would impact the certification eligibility of the seed crop as defined in the specific crop standards. Such factors may be, but are not limited to, contaminating pollen sources, weeds, jointed goatgrass, jointed goatgrass hybrids or other crop.

AMENDATORY SECTION (Amending WSR 10-08-028, filed 3/31/10, effective 5/1/10)

WAC 16-302-080 ((~~What will cause a~~)) Seed fields ((~~to be~~)) ineligible for seed certification((~~?~~)). (1) A seed field is not eligible for certification unless a field inspection is made prior to defoliation or harvesting.

(2) Prohibited noxious weeds must be controlled to prevent seed formation, with the exception of jointed goatgrass or jointed goatgrass hybrids, the presence of which in "small grain" fields will be cause for rejection. Follow-up inspections may be conducted to ensure weed control was sufficiently carried out to prevent prohibited noxious weed seeds from being harvested with the seed crop. Excessive objectionable weeds may be cause for rejection of a seed field. Excessive weeds, poor stands, lack of vigor, or other conditions which make inspection inaccurate may be cause for rejection. A field producing foundation or registered seed that warrants a rejection because of noxious weeds may be reclassified to certified blue tag class if upon reinspection the field meets certified blue tag standards.

(3) If a seed field is rejected for certification, the grower may reapply to the certifying agency and pay a fee for reinspection after the cause for rejection is corrected, unless otherwise specified in chapter 16-302 WAC. No more than two reinspections are permitted for each field per year.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-085 ((~~When may an applicant withdraw~~)) Withdrawing a field from inspection for seed certification((~~?~~)). The applicant applying for seed certification may withdraw a field from field inspection for seed certification by notifying the certifying agency before the field is inspected.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-090 Sampling—Methods used in the sampling, inspecting, testing, analyzing and examining

seed for certification. (1) The terms used in seed testing and the methods of sampling, inspecting, analyzing, testing and examining seed for certification are those adopted by the AOSA as shown in WAC 16-301-010. Other testing methodologies such as, but not limited to, genetic testing may also be used to determine certification eligibility.

(2) The entire lot of seed must be cleaned, the quantity defined, and in condition for sale at the time of sampling((~~.~~)), except for ryegrass, which may be sampled under the early sampling program as allowed in WAC 16-302-091.

(3) The department shall obtain a representative sample for laboratory analysis of each lot of seed for certification. The sample shall be taken in accordance with official sampling procedures. Official sampling procedures are as follows:

Seed in bags.

(a) When more than one core is drawn from a bag, follow different paths. When more than one handful is taken from a bag, take them from well-separated points.

(b) For lots of one to six bags, sample each bag and take a total of at least five cores or handfuls.

(c) For lots of more than six bags, sample five bags plus at least ((~~10%~~)) ten percent of the number of bags in the lot. Round numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than thirty bags.

Ex: No. bags in lots	7	10	23	50	100	200	300	400
No. bags to sample	6	6	7	10	15	25	30	30

(4) Bulk seed. To obtain a composite sample, take at least as many cores or handfuls as if the same quantity of seed were in bags of an ordinary size. Take the cores or handfuls from well distributed points throughout the bulk.

(5) Seed in small containers. Seed in small containers shall be sampled by taking the entire unopened container in sufficient number to supply a minimum size sample for testing. The contents of a single container or the combined contents of multiple containers of the same lot shall be considered representative of the entire lot of seed sampled.

(6) A mechanical sampling device installed in a conditioning plant approved by the department under WAC 16-302-125 may be used in lieu of the sampling procedures above. Hand samples taken during the conditioning process may also be used in lieu of the sampling procedures above.

(7) If it is necessary for a sample to be taken by the department, a sampling fee will be charged under provisions of chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

WAC 16-302-091 ((~~What is the~~)) Program for early sampling of ryegrass((~~?~~)). The procedure for participating in the program for early sampling of ryegrass is as follows:

(1) Any company participating in this program must submit a report to the seed program listing the grower, acreage, variety, and field number of each field to be enrolled. This report must be filed by June 15th of each year. For fields that are in their second year of production or beyond, all lab numbers of tests from the previous year must also be provided.

(2) The seed company is responsible for having their field personnel sample each field in the windrow. The sample must be obtained from well-distributed points throughout the field. It is recommended that samples be thrashed and cleaned prior to testing. An additional fee will be charged for samples that are not cleaned. Samples must be forwarded to the seed program with the following information: The crop and variety, field number, grower, the name of the seed company, and a request for germination and fluorescence test. The sample must also indicate that it is being submitted under the early sampling program for ryegrass.

(3) At the time of conditioning the seed, a composite sample must be submitted to the seed program for purity testing. The sample information must indicate the seed is from a field under the early sampling program for ryegrass. In addition to providing complete certification information, the lab number on which the fluorescence test was conducted must also be provided. The seed program may run a fluorescence test on the composite sample to verify the results from the early sample.

(4) Certification tags will be issued upon completion of all required testing meeting the minimum certification standards for ryegrass. A tagging request must be filed with the seed program.

(5) Failure to comply with the requirements of this section will result in the disqualification of the seed company from the early sampling program for the year.

AMENDATORY SECTION (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

WAC 16-302-100 Seed certification—Prohibited noxious weed seed. The following are considered prohibited noxious weeds for the purpose of seed certification.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Austrian fieldcress	*Rorippa austriaca* (~~((Crantz) Bess.)~~)
Field bindweed	*Convolvulus arvensis* (~~((L.))~~)
Hedge bindweed	*Calystegia* spp.
Camelthorn	*Alhagi maurorum*
Canada thistle	*Cirsium arvense* (~~((L.) Scop.))~~
Dodder	*Cuscuta* spp.
Hairy whitetop	*Lepidium appelianum*
Hoary cress	*Lepidium draba* (~~((L.) Desv.))~~
Jointed goatgrass and jointed goatgrass hybrids	*Aegilops cylindrica*
Leafy spurge	*Euphorbia esula* (~~((L.))~~)
Perennial pepperweed	*Lepidium latifolium* (~~((L.))~~)
Perennial sowthistle	*Sonchus arvensis* (~~((L.))~~)
Quackgrass	*Elymus repens*

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Knapweed complex	
Bighead	*Centaurea macrocephala*
Vochin	*Centaurea nigrescens*
Black	*Centaurea nigra*
Brown	*Centaurea jacea*
Diffuse	*Centaurea diffusa*
Meadow	*Centaurea ((~~jacea x nigra~~)) x moncktonii*
Russian	*Rhaponticum repens*
Spotted	*Centaurea stoebe* subsp. *australis*
Purple starthistle	*Centaurea calcitrapa*
Yellow starthistle	*Centaurea solstitialis ((~~L.~~))*
Serrated tussock	*Nassella trichotoma*
Silverleaf nightshade	*Solanum elaeagnifolium* Cav.
Sorghum perennial such as, but not limited to, johnsongrass, sorghum almum, and perennial sweet sudangrass	*Sorghum* spp.
Tansy ragwort	*Jacobaea vulgaris*
Yellow-flowering skeleton weed	*Chondrilla juncea ((~~L~~))*
White cockle	*Silene latifolia (only in timothy)*
Bladder campion	*Silene vulgaris (only in timothy)*
Lepyrodiclis	*Lepyrodicilis holsteoides*
Velvetleaf	*Abutilon theophrasti*

AMENDATORY SECTION (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

WAC 16-302-105 Seed certification—Objectionable weeds. The following weeds are considered objectionable noxious weeds for the purpose of seed certification.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass or slender foxtail	*Alopecurus myosuroides*
Blue lettuce	*Lactuca tatarica*
Docks and sorrel	*Rumex* spp.
Field pennycress (fanweed)	*Thlaspi arvense*
Field sandbur	*Cenchrus ((~~incertus~~)) spinifex*
Halogeton or clustered barilla salt	*Halogeton glomeratus ((~~C.A. Mey.~~))*
Medusahead	*Taeniatherum caput-medusea* subsp. *caputmedusae*
Plantains	*Plantago* spp.
Poverty weed	*Iva axillaris ((~~Pursh.~~))*
Puncturevine	*Tribulus terrestris ((~~L.~~))*
St. Johnswort	*Hypericum perforatum ((~~L.~~))*
Dalmation toadflax	*Linaria dalmatica ((~~(L.) Mill.~~))*
Yellow toadflax	*Linaria vulgaris ((~~Hill.~~))*
Western ragweed	*Ambrosia psilostachya ((~~DC.~~))*
Wild mustard	*Sinapis arvensis subsp. arvensis*
Wild oat	*Avena fatua ((~~L.~~))*
Gromwell (in small grain)	*Buglossoides arvensis*
Bedstraw	*Galium* spp. (in alfalfa only)
Black mustard	*Brassica nigra*
Brown mustard	*Brassica juncea* (in rapeseed or canola only)
Wild radish	*Raphanus raphanistrum*
Dyers woad	*Isatis tinctoria*

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-302-110 Completion of seed certification—~~((When may seed be labeled with a seed certification tag, label or seal?))~~ Tagging, labeling, or sealing. (1) The seed certification tag, label or seal is evidence of the genetic identity and purity of the contents must be attached to a container of certified seed prior to distribution. Seed that fails to meet certification standards because of genetic purity is not eligible for labeling.

(2) Seed certification tags, labels, and seals must be obtained from the certifying agency except as allowed in WAC 16-302-390, and must be attached to seed containers in accordance with the certifying agency's rules.

(3) Certification of seed is valid only if the tag, label or seal is affixed to each container in accordance with the AOSCA procedures as shown in WAC 16-301-010.

(4) No tag, label or seal may be removed and reused without permission of the certifying agency.

(5) A certified seed sale certificate will be issued upon completion of final certification for all seed to be sold in bulk. This certificate must accompany any shipment or transfers including those to other seed plants, out-of-state shipments or with any brokered seed. The seed plants own invoice may be used in lieu of a certified seed sale certificate for retail sales to growers. The invoice must contain the certification information from the certified seed sale certificate as well as label-

ing information as required in WAC 16-301-015, 16-301-020, and 16-301-030.

(6) Seed that fails to meet certification requirements on factors other than genetic purity may be designated substandard at the discretion of the certifying agency. The certification tag or label attached to the seed must clearly show the reason the seed is substandard. Seed may not be tagged substandard if the seed can be remilled to meet minimum seed standards.

(7) Refer to chapter 16-301 WAC for seed labeling requirements.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

WAC 16-302-125 ((~~Who may condition~~)) Conditioning seed in Washington state((~~?~~)). (1) Under the authority of RCW 15.49.350, a seed conditioning facility must be inspected and approved by the department or its authorized agent prior to conditioning seed in Washington state. Upon approval by the department, a seed conditioning permit is issued and the facility is placed on a list of approved seed conditioning plants. A copy of the list can be obtained by contacting the department seed program.

(2) A person desiring to condition seed must make application to the department for a permit on a form provided by the department.

(3) To obtain department approval for a seed-conditioning permit, the department or its authorized agent conducts an inspection. A facility must show evidence that:

(a) Seed for certification is handled in a manner which prevents mixture of lots of seed;

(b) The seed conditioning facility is maintained and cleaned. Equipment must be easily accessible for cleaning and inspection, and must be cleaned between lots;

(c) Each lot of seed is identified with a lot number;

(d) Screenings are disposed of in accordance with chapter 15.49 RCW; and

(e) Seed is sampled in accordance with WAC 16-301-095, 16-302-090 and 16-302-091.

(4) A seed conditioning facility must be approved by the department prior to handling seed for certification in bulk.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-130 ((~~What are the~~)) Responsibilities of a seed conditioner((~~?~~)). (1) It is the responsibility of a department approved seed conditioner to operate in a manner that:

(a) Maintains the purity and identity of seed conditioned, stored, transshipped or labeled.

(b) Complies with the standards and procedures for conditioning and sampling seed in accordance with chapter 15.49 RCW and rules adopted thereunder.

(2) Prior to shipping seed out-of-state, ((~~the seed conditioner must obtain approval from the certifying agency. Refer~~)) adhere to WAC 16-302-145 through 16-302-165 for interagency seed certification requirements.

(3) Records of all operations must be complete and adequate to account for all incoming seed and final disposition of seed.

(4) The seed conditioner is responsible for seed certification fees including sampling, testing, production and final certification fees, and may request the responsibility for additional fees.

(5) Failure of a seed conditioner to comply with the seed law and rules is cause for the department to revoke a seed conditioning permit under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-135 ((~~What~~)) Considerations ((~~are there~~)) for blending seed((~~?~~)). (1) Size of seed blend permitted is dependent on factors such as quality of seed lots to be blended and the conditioning plant facilities.

(2) A blend data sheet is filed with the certifying agency and must be maintained by the seed conditioner. Laboratory analysis must be completed before tags are issued.

(3) Seed must be blended by a seed conditioner approved by the department under WAC 16-302-125.

(4) A representative of the certifying agency may supervise the blending operation.

(5) A tetrazolium test may be used in lieu of a germination test.

(6) ((~~Upon approval of the certifying agency,~~)) Field run lots of seed may be commingled to facilitate conditioning. The blend fee shall not apply.

(7) Remill lots of seed may be blended prior to testing to facilitate processing.

(8) Individual lots of grass seed shall not contain more than one hundred eighty per pound and alfalfa and clover shall not contain more than ninety per pound of objectionable weed seeds.

(9) Individual lots must be free of prohibited noxious weed seeds.

(10) Two or more sod quality lots may be blended and tagged as a "sod quality mixture or blend." Appropriate tags will be issued and blend fee shall be applicable.

(11) Seed lots resulting from a blend of different certified classes may only be labeled at the lower class.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-140 ((~~When are seed blends eligible for~~)) Tagging seed blends prior to analysis((~~?~~)). Blends are eligible for tagging prior to analysis of the official sample of the blend upon meeting the following conditions:

(1) The calculated percent of impurities (weeds, crop, inert, etc.) is twenty percent less than the maximum allowed in rules for seed certification.

(2) The calculated percent of germination is not less than the minimum germination standard established in the rule for seed certification.

(3) All seed lots blended meet certification standards.

(4) All lots of seed used in a registered class blend must meet registered class purity and germination standards.

(5) Fees for blending are payable to the department by the person requesting permission for the blend after completion of lab analysis. Refer to chapter 16-303 WAC for the appropriate fee.

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-302-150 Eligibility for interagency certification. (1) Seed recognized for interagency certification must be received in containers carrying official certification labels ((~~or~~)), accompanied by transfer certificates or other proper documentation showing evidence of its eligibility from another official certifying agency together with the following information:

(a) Variety and species;

(b) Quantity of seed;

(c) Class of seed; and

(d) Field or lot number traceable to the previous certifying agency's records.

(2) Seed tagged and sealed with official certification tags is eligible for interagency certification without obtaining approval from the certifying agency of the originating state.

(3) An "interagency certified seed" report form must be submitted to all certifying agencies involved. Forms can be obtained from the department seed program. Information required to complete the form includes:

Part A

- Name
- Address of shipper
- Destination
- Shipping weight
- Lot number and receiving weight
- Grower name
- Field number
- Date of seed shipment
- Amount of seed used
- Date shipment is received by the receiving state

Part B

((~~• Date shipment is received by the receiving state~~
~~• Receiving weight and lot number~~))
- Clean weight
- Bag count
- New lot number if different than the receiving lot number

((~~• Screenings weight~~))

(4) Certified seed not tagged and sealed with official certification tags must follow the interagency certification procedure in WAC 16-302-155.

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-302-155 Interagency seed certification procedure. Certified seed that is produced in Washington state and shipped out-of-state must comply with the interagency seed certification procedure.

(1) The interagency seed certification procedure for field pea, lentil, soybean, small grain and sorghum seed is as follows:

(a) A certified seed sale certificate must be executed by the department for unprocessed seed pending final certification when moved out-of-state.

(b) Unprocessed seed pending final certification is subject to all certification fees when moved out-of-state.

(2) The interagency seed certification procedure for all other kinds of seed except field pea, lentil, soybean, small grain and sorghum seed shipped out-of-state is as follows:

(a) ((~~Obtain approval of all certifying agencies involved prior to shipment:~~

~~•~~)) Complete section (A) of "interagency certified seed" report referred to in WAC 16-302-150(3). ((~~Prior to shipment~~)) One copy of the "interagency certified seed" report must be submitted to the department seed program and one copy to the certifying agency where seed is being processed.

((~~•~~)) (b) Clearly mark each container with the lot number and Washington field number.

(((~~b~~))) (c) If the department is to finalize certification, upon completion of seed processing, section (B) of "interagency certified seed" report referred to in WAC 16-302-150(3) must be completed and submitted to the ((~~department seed program.~~

~~• If the department is to finalize certification, a representative of the certifying agency in the receiving state must draw an official sample. The~~)) appropriate certification agency. A sample must be submitted to the department seed program.

((~~•~~)) (d) When Washington state certification tags are used, the lot must be tagged and sealed under supervision of the department. The applicant must pay a mileage fee and hourly rate for all additional mileage and travel time required.

((~~•~~)) (e) When Washington state interagency tags are used, the tags must be mailed to the nearest representative of the certifying agency having jurisdiction for tagging.

(((~~e~~))) (f) If another state receives seed and finalizes certification, the department must advise the receiving state's certifying agency of certification eligibility. Sampling, testing, and tagging shall be in accordance with the receiving state's requirements.

(((~~d~~))) (g) The applicant for interagency seed certification is responsible for all fees authorized under Washington's certification program and any additional fees that may be assessed by both agencies involved. Fees for Washington's interagency certification program must be paid upon submission to the department of the "interagency certified seed" report, section (A).

AMENDATORY SECTION (Amending WSR 10-08-028, filed 3/31/10, effective 5/1/10)

WAC 16-302-170 Other considerations in applying the standards for certification. (1) Any crop certification standard, with the exception of germination that is expressed as a percent will be derived from a test based on the minimum weight for purity analysis as specified in the ((~~2000~~)) 2013 AOSA rules for that crop unless otherwise specified in rule.

(2) Any crop certification standard that is based on a number per pound will be derived from a test based on the minimum weight for noxious weed seed examination as specified in the ((~~2000~~)) 2013 AOSA rules for that crop unless otherwise specified in rule.

(3) For species that have a high rate of inherent dormancy, it will be acceptable to use the percent of total viability instead of germination percentage for certification only. State and federal seed laws require seed be labeled on a germination test.

(4) For species or varieties that contain GMO (genetically modified organism) traits, herbicide resistant traits, or other novel traits, each seed lot may be required to meet minimum trait standards as defined by the breeder or trait owner. The variety description must define the trait. To determine the level of trait present, a test such as PCR (polymerase chain reaction) or specified bioassay test may be required. If a test is not otherwise available the variety owner must provide testing protocols to the department.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-210 ((~~What is the~~)) Organization for economic cooperation and development((~~?~~)). The Organization for Economic Cooperation and Development (OECD) certification scheme is an international organization limited to federal government membership. The agricultural research service of the United States Department of Agriculture is responsible for implementing the OECD seed certification schemes in the United States. The department, by virtue of an agreement with the agricultural research service, United States Department of Agriculture, is authorized to implement OECD certification in Washington state.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-215 Crop standards for OECD variety certification. (1) With the exception of seed standards established in rule by the department and the OECD scheme for varietal certification, the general and specific crop certification standards ((~~as established in rule by the department~~)) are basic and, together with the following specific standards, constitute the rules for OECD varietal seed certification.

(2) Varieties eligible for OECD certification((~~.~~)):

(a) Crop varieties of Unites States origin shall be eligible for OECD certification only if accepted into Washington state's certification program.

(b) Crop varieties, of origin other than United States, are eligible for OECD certification only if listed in OECD publication, *List of Cultivars Eligible for Certification*.

(3) Classes of seed eligible for OECD certification((~~.~~)):

Washington and U.S. Seed Classes	Label Color	Equivalent OECD Seed Classes	OECD Label Color
Breeder	- - - -	Prebasic	((- - - -)) White with diagonal violet stripe
Foundation	White	Basic	White
Registered	Purple	Basic	White
Certified	Blue	1st Generation Certified Seed	Blue
Certified produced from Certified	Blue	2nd Generation Certified Seed	Red

(a) Breeder or prebasic shall be planted to be eligible to produce basic white label.

(b) Foundation white label, registered purple label, or basic white label shall be planted to be eligible to produce 1st generation blue label.

(c) Certified or 1st generation blue label shall be planted to be eligible to produce 2nd generation red label.

(4) OECD seed stock sample. Each lot of OECD seed stock shall be sampled under supervision of the certifying agency before seals are broken. Samples are used as control for grow out test and a portion may be submitted to seed laboratory for analysis if deemed necessary. Seed stock lots without official tags will not be granted OECD approval.

(5) The department must obtain approval from the originating country for each OECD seed stock lot to be planted in the state of Washington for OECD production. Request for OECD approval is submitted by the seed program to ARS-((~~Beltsville, Maryland~~)) Gastonia, North Carolina, which then contacts the originating country.

(6) Application for OECD certification and fees.

(a) Applicant desiring plantings to be eligible for OECD certification must submit applications and fees as required for certification of that crop under Washington state's certification standards. Certification requirements and procedures for each species shall be the genetic standards in Washington state's certification program supplemented by OECD standards and by the limitations specified by originating country; such as, length of stand and number of seed crops eligible. All OECD seed shall be ((~~officially~~)) sampled according to WAC 16-302-090 and tested prior to tagging. Seed lots may not be required to meet Washington's minimum purity or germination certified seed standards.

(b) Washington OECD eligible lots may, with approval of both agencies involved, be blended with OECD eligible seed of other state agencies. The applicant is responsible for all fees of both agencies involved.

(c) Seed produced out-of-state and processed in Washington must be OECD tagged by the state of origin.

(7) OECD tagging and sealing. OECD tags shall be printed and issued according to OECD rules. The department seed program shall issue an OECD reference number; e.g., (USA-W-78-000), which is printed on each tag. The department recommends that OECD reference numbers be stenciled on each bag. Additional statements on the OECD tag such as, "date of sealing," etc., must be kept to a minimum.

(8) Bagging sample of OECD lot. A bagging sample of each lot of OECD seed tagged is drawn under supervision of the certifying agency. One hundred to two hundred fifty grams of the sample must be held for the originating country, and the balance of the sample is used for required post control grow-out tests.

(9) OECD certificate. The seed program shall issue an OECD certificate showing:

(a) Species((~~,~~)):

(b) Variety((,)),

(c) Reference number((,)),

(d) Date of sealing((,)),

(e) Number of containers((,)),

(f) Weight of lot, class of seed((,)), and

(g) OECD reference number of seed stock used for each lot tagged and sealed upon receipt of tagging report and bagging sample.

One copy of the OECD certificate is to be mailed to the shipper, one copy is mailed to ARS-USDA, ((~~one copy is attached to bagging sample~~)) and one copy is for department seed program files.

(10) OECD grow-out tests. As prescribed by OECD rules, at least one of four domestic ((~~lots~~)) first generation lots and every basic lot tagged and all lots of foreign varieties OECD tagged must be planted in grow-out tests.

(11) Special OECD fees. In addition to fees required by applicable Washington certification rules, an additional fee shall apply to all seed tagged OECD. Refer to chapter 16-303 WAC for the appropriate fee.

All fees are payable by the person requesting OECD certificate.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-220 ((~~What are the~~)) Standards for alfalfa seed certification. (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-225 through 16-302-240 constitute the standards for alfalfa seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-245 ((~~What are the~~)) Standards for bean seed certification. (1) The general seed certification standards and definitions in this chapter are basic and together with WAC 16-302-250 through 16-302-270 constitute the standards for bean seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

(3) Prior to the planting of bean seed stock, the seed must be in compliance with the quarantine requirements found in chapter 16-301 WAC in order to be eligible for certification. Any seedling application submitted without proof of quarantine compliance will not be accepted into the certification program. Any seed field planted in violation of chapter 16-301 WAC will be subject to the procedures in WAC 16-301-435, 16-301-440, and 16-301-485.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

WAC 16-302-260 Field tolerances and requirements for bean seed certification. (1) Field tolerances and requirements for the production of a bean seed crop are as follows:

	Field Producing		
	Foundation	**Registered**	**Certified**
Percent of other varieties or off-type plants	none found	((~~0.1%~~)) 0.10	((~~0.2%~~)) 0.20
Percent of other crops((~~*~~)) (a)	none found	((~~0.1%~~)) 0.10	((~~0.1%~~)) 0.10
Percent of total seed-borne diseases((~~**~~)) (b)	none found	none found	none found

((~~*~~)) (a) Except as noted in subsection (6) of this section.

((~~**~~)) (b) ((~~Except as noted in~~)) See subsection (7) of this section.

(2) Snap and kidney beans must be isolated by 1320 feet from known bacterial blight.

(3) The following requirements apply to bean seed certification:

(a) Pintos, red mexicans, pinks, great northern, small whites, navy beans, and black turtle beans may be grown for an unlimited number of generations under rill or sprinkler irrigation.

(b) Kidney beans, cranberry types, Taylor horticultural types, and Borlotto types may be grown for an unlimited number of generations under rill irrigation or for one generation under rill irrigation and, subsequently, for two generations under sprinkler irrigation. The fourth and unlimited subsequent generations may be grown and inspected with the same alternation of irrigation types.

(4) Bean fields must be rogued of weeds, off-type plants, volunteer plants, and plants showing symptoms of seed-borne diseases. Excessive nightshade shall be a cause for rejection.

(5) For a bean field to be eligible for certification it must be clean and have boundaries that are clearly defined and a minimum of 36" which is adequate to prevent mechanical contamination.

(6) Excessive weeds, poor stands, lack of vigor, or any other condition which is apt to make inspection inaccurate may be cause for rejection of a bean field.

(7) Bean fields, including those planted with a dominant I-gene cultivar, ((~~are allowed the following levels of bean seed-borne virus diseases in the field: For foundation class, none found; for registered class 0.5%, and for certified class 1.0%~~)) must be in compliance with WAC 16-301-365 through 16-301-440.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-275 ((~~What are the~~)) Standards for corn seed certification. (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-280 through 16-302-315 constitute the standards for corn seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-320 ((~~What are the~~)) Standards for grass seed certification((~~?~~)). (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-325 through 16-302-360 constitute the standards for grass seed certification.

(2) Each lot of seed stock subject to the annual bluegrass and rough bluegrass quarantine as established in chapter 16-301 WAC must be in compliance with the quarantine requirements prior to planting in order to be eligible for certification. Any seedling application submitted without proof of quarantine compliance will not be accepted into the certification program. Any seed field planted in violation of chapter 16-301 WAC will be subject to the violation procedures under WAC 16-301-295 and 16-301-355.

(3) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 11-06-023, filed 2/24/11, effective 3/27/11)

WAC 16-302-385 Grass seed standards for certification. The seed standards for grass shall be as follows:

SEED STANDARDS

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330		MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES		
A Apomictic C Cross Pollinated S Highly Self Fertile		FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG. (i)	CERT. (a)	FNDT. SEEDS/ lb.	REG. SEEDS/ lb.	CERT. %
BLUEGRASS								((~~.05~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))			((~~.25~~))
Big								0.05	0.30	0.10	0.50			0.25
Canby								((~~.05~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))			((~~.25~~))
Kentucky								0.05	0.30	0.10	0.50			0.25
Canada((~~,~~)) & Upland	(A)	70	70	90	90	10	10	((~~.05~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	45 /lb.	454 /lb.	((~~.25~~))
Rough	(A)	70	70	90	90	10	10	0.05	0.30	0.10	0.50	45 /lb.	454 /lb.	0.25
	(A)	80	80	97	97	3	3	((~~.05~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	45 /lb.	454 /lb.	((~~.25~~))
	(A)	80	80	96	92	4	8	0.05	0.30	0.10	0.50	45 /lb.	907 /lb.	0.25
	(A)	75	75	95	95	5	5	0.30	0.30	0.10	0.50	45 /lb.	454 /lb.	0.25
BROMEGRASS														
Smooth & Meadow	(C)	80	85	95	95	5	5	((~~.05~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	9 /lb.	91 /lb.	((~~.25~~))
California, Mountain &	(C)	85	85	95	95	5	5	0.05	0.30 (c)	0.10	0.50	9 /lb.	91 /lb.	0.25
Sweet								((~~.3~~))	((~~.3~~))	((~~.1~~))	1.0			((~~.25~~))
								0.30	0.30 (c)	0.10				0.25
DEERTONGUE	(C)	50	50	97	95	3	5	((~~.50~~))	((~~.5~~))	1.0	1.0	1%	-	-
								0.50	0.50 (c)					
FESCUE								((~~.03~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))			((~~.25~~))
Tall & Meadow	(C)	80	85	95	97	5	3	0.03	0.30 (c)	0.10	0.50	18 /lb.	91 /lb.	0.25
Blue, Hard & Sheep (m)														
Turf Type (o)	(C)	80	85	95	97	5	3	((~~.03~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	9 /lb.	45 /lb.	((~~.25~~))
Reclamation/Range								0.03	0.30 (c)	0.10	0.50			0.25
Type (o)		80	85	95	92	5	8					9 /lb.	45 /lb.	
								((~~.03~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))			((~~.25~~))
								0.03	0.30 (c)	0.10	0.50			0.25
Chewings Red,	(C)	80	90	95	97	5	3	((~~.03~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	9 /lb.	45 /lb.	((~~.25~~))
Idaho and other								0.03	0.30 (c)	0.10	0.50			0.25
Fescue														
ORCHARDGRASS	(C)	80	85	((~~85~~))	((~~90~~))	((~~15~~))	((~~10~~))	((~~.03~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	27 /lb.	91/lb.	((~~.25~~))
				92	92	8	8	0.03	0.30 (c)	0.10	0.50			0.25
			80 for penlate & latar											
RYEGRASS	(C)	85	90 (l)	96 (k)	97 (k)	4	3	((~~.1~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	9 /lb.	45 /lb.	((~~.25~~))
Pennfine		80	85	96 (k)	97 (k)	4	3	0.10	0.30 (c)	0.10	0.50	9 /lb.	45 /lb.	0.25
								((~~.1~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))			((~~.25~~))
								0.10	0.30 (c)	0.10	0.50			0.25
TIMOTHY		80	85	97	97	3	3	((~~.1~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	9 /lb.	45 /lb.	((~~.25~~))
								0.10	0.30	0.10	0.50			0.25
WHEATGRASS (((~~n~~)))														
Beardless	(C)	80	85	90	90	10	10	((~~.1~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))	9 /lb.	45 /lb.	25
Bluebunch & Snake River	(C)	80	85	90	90	10	10	0.10	0.30 (c)	0.10 (e)	0.50 (e)	9 /lb.	45 /lb.	25
								((~~.1~~))	((~~.3~~))	((~~.1~~))	((~~.5~~))			
								0.10	0.30 (c)	0.10 (e)	0.50 (e)			

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330		MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES		
A Apomictic C Cross Pollinated S Highly Self Fertile		FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG. (i)	CERT. (a)	FNDT. SEEDS/ lb.	REG. SEEDS/ lb.	CERT. %
Intermediate, Tall Pubescent	(C)	80	85	95	95	5	5	((~~.1~~)) 0.10	((~~.3~~)) 0.30 (c)	((~~.1~~)) 0.10 (e)	((~~.5~~)) 0.50 (e)	9 /lb.	45 /lb.	((~~.25~~)) 0.25
Western, R/S, Streambank, Thickspike (p)	(C)	80	85	90	90	10	10	((~~.1~~)) 0.10	((~~.3~~)) 0.30 (c)	((~~.1~~)) 0.10 (e)	((~~.5~~)) 0.50 (e)(p)	9 /lb.	45 /lb.	((~~.25~~)) 0.25
Slender Crested & Siberian	(S) (C)	80 80	85 85	90 90	((~~90~~)) 95 95	10 10	((~~10~~)) 5 5	((~~.1~~)) 0.10 ((~~.1~~)) 0.10	((~~.3~~)) 0.30 (c) ((~~.3~~)) 0.30 (c)	((~~.1~~)) 0.10 (e) ((~~.1~~)) 0.10 (e)	((~~.5~~)) 0.50 (e) ((~~(p) .5~~)) 0.50 (e)	9 /lb. 9 /lb.	45 /lb. 45 /lb.	((~~.25 (p)~~)) 0.25 ((~~.25~~)) 0.25
INDIAN RICEGRASS	(S)	80 (j)	80 (j)	95	90	5	10	((~~.3~~)) 0.30	((~~.5~~)) 0.50	((~~.5~~)) 0.50	1.0	9 /lb.	45 /lb.	((~~.25~~)) 0.25
PUCCINELLIA (((~~n~~)) distans Alkaligrass	(C)	80	80	90	95	5	5	((~~.3~~)) 0.30	((~~.5~~)) 0.50	((~~.5~~)) 0.50	1.0	45 /lb.	454 /lb.	((~~.25~~)) 0.25
WILDRYE (((~~n~~)))	(C)	80	80	90	90	10	10	((~~.1~~)) 0.10	((~~.3~~)) 0.30 (c)	((~~.1~~)) 0.10	((~~.5~~)) 0.50	9 /lb.	45 /lb.	((~~.25~~)) 0.25
BENTGRASS	(C)	85	85	98	98	2	2	((~~.3~~)) 0.30	((~~.4~~)) 0.40 (f)(g)	((~~.2~~)) 0.20	((~~.6~~)) 0.60 (h)	-	-	-
REDTOP	(C)	80	80	92	92	8	8	((~~.3~~)) 0.30	((~~.5~~)) 0.50 (f)	((~~.5~~)) 0.50	((~~.2~~)) 0.20	-	-	-
Ann. CANARYGRASS ((~~GREEN (n)~~ ~~NEEDLEGRASS~~ ~~SWITCHGRASS~~	(C) ~~(C)~~ ~~(C)~~	85 ~~80~~ ~~60~~	85 ~~80~~ ~~60~~	99 ~~80~~ ~~90~~	99 ~~80~~ ~~90~~	1 ~~20~~ ~~10~~	1 ~~20~~ ~~10~~	((~~.1~~)) 0.10 ~~.1~~ ~~.5~~	((~~.3~~)) 0.30 ~~.3 (e)~~ ~~1.5~~	1 /lb. ~~.1~~ ~~.1~~	3 /lb. ~~.5~~ ~~.25~~))	-	-	-
HAIRGRASS Slender Tufted	(C)	75	70	92	90	8	10	0.30	0.60	0.10	0.50	-	-	-
BERMUDAGRASS	(C)	-	80	-	97	-	3	-	0.20	-	0.25	-	-	-
GREEN NEEDLEGRASS	(C)	80	80	80	80	20	20	0.10	0.30	0.10	0.50	-	-	-
SWITCHGRASS	(C)	60	60	90	90	10	10	0.50	1.50	0.10	0.25	-	-	-

The following (a) - (p) are notes to the above table.

(a) Not to exceed ((~~.25~~)) 0.25% other grass species for blue tag seed.

(b) Grass seed must not contain more than 45/lb. for registered seed 91/lb. for certified seed, singly or collectively, of objectionable weed seeds. (See (f) of this subsection for certified bentgrass and redtop exemption.) Grass seed shall be free of the seed of prohibited noxious weeds.

(c) A tolerance of ((~~0.5~~)) 0.50% may be allowed for samples containing weedy ((~~bromus~~)) *Bromus* spp. provided the total of all other weed seeds does not exceed ((~~0.3~~)) 0.30%.

(d) A standard tetrazolium (two hundred seed) test may be used in lieu of germination test. NOTE: State and federal seed laws require seed be labeled on a germination test.

(e) A tolerance of ((~~0.8~~)) 0.80% may be allowed in registered and certified wheatgrass containing small grain seed provided the total of all other crop seed does not exceed ((~~0.1~~)) 0.10% for registered class and ((~~0.5~~)) 0.50% for certified class.

(f) Certified seed must not contain over 907 seeds per pound, singly or collectively, of the following weeds: *Plantago* spp., big mouse-ear chickweed, yarrow, spotted cat's ear, and dandelion.

(g) A maximum of ((~~.50~~)) 0.50% weed seed may be allowed in certified bentgrass containing silver hairgrass provided the total of all other weed seed does not exceed ((~~.40~~)) 0.40%.

(h) 1.50% other fine bentgrasses and ((~~.50~~)) 0.50% redtop may be allowed in certified bentgrass containing a minimum of ((~~98.00~~)) 98% total bentgrass.

(i) A crop exam is required for all registered and foundation class grass seeds.

(j) Or 70% by Tz test.

(k) Maximum other ryegrass allowed as determined by fluorescence test: Foundation ((~~0.1~~)) 0.10%, registered 1%, certified 2% for annual and 3% for perennial containing a minimum of 97% total ryegrass. Acceptable fluorescence levels for specific varieties available upon request.

(l) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.

(m) An ammonia test is required on hard, Idaho, blue and sheep fescue to determine presence of other ((~~Fescue~~)) *Festuca* sp. Other fine-leaved fescue found in the ammonia test will be included with other crop not other grass species.

(n) Total viability as allowed in WAC 16-302-170 can be substituted for germination percentage.

(o) Turf type fescues 97% pure seed. Range/reclamation types 92% pure seed. Varietal designation of turf or range/reclamation types ((~~are~~)) is to be made by the breeder or variety owner. If no designation is made, the variety will be considered a turf type.

(p) 10% slender wheatgrass is allowed in the certified class of Critana and 5% *Elymus* species allowed in the certified class of Schwendimar, provided that the total of all other grass ((~~spp.~~)) species does not exceed ((~~.25~~)) 0.25% and total other crop, including all other grass ((~~spp.~~)) species does not exceed ((~~.50~~)) 0.50%.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-395 ((~~What are the~~)) Standards for sod quality seed certification((~~?~~)). (1) The general seed certification definitions and standards in this chapter and the grass seed certification standards are basic and together with WAC 16-302-400 through 16-302-410 constitute the standards for sod quality seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 06-15-137, filed 7/19/06, effective 8/19/06)

WAC 16-302-410 Standards for sod quality seed. (1) Except for ryegrass sod quality seed, seed standards for sod quality grass seed are as follows:

Variety	Minimum ((~~Purity~~)) % Pure	Minimum % Germination	Maximum((~~*~~))% Other Crops (a)	Maximum((~~**~~))% Weeds (b)
Kentucky Bluegrass	97((~~%~~))	80((~~%~~))	((~~0.1%~~)) 0.10	((~~.02%~~)) 0.02
Red Fescue	98((~~%~~))	90((~~%~~))	((~~0.1%~~)) 0.10	((~~.02%~~)) 0.02
Chewings Fescue	98((~~%~~))	90((~~%~~))	((~~0.1%~~)) 0.10	((~~.02%~~)) 0.02
Tall Fescue	98((~~%~~))	85((~~%~~))	((~~0.1%~~)) 0.10	((~~.02%~~)) 0.02

((~~*~~)) (a) Must be free of ryegrass, orchardgrass, timothy, *Agrostis* sp., black medic, *Poa trivialis*, brome, reed canarygrass, tall fescue, clover, and meadow foxtail. Maximum allowable Canada bluegrass ((~~.02~~)) 0.02%. When the base sample is one of these kinds, the species will not be considered a contaminant (i.e., tall fescue in tall fescue).

((~~**~~)) (b) Must be free of Big, Canby and Sandberg bluegrass, dock, chickweed, crabgrass, plantain, short-awn foxtail, annual bluegrass, velvetgrass, *Vulpia* sp., and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105.

(2) Seed standards for sod quality ryegrass seed are as follows:

Variety	Minimum ((~~Purity~~))% Pure	Germination ((~~****~~)) % (d)	Other Crops ((~~*~~))% (a)	Maximum % Weeds ((~~***~~)) (c)
Ryegrass ((~~**~~)) (b)	98((~~%~~))	90((~~%~~))	0.10((~~%~~))	((~~.02%~~)) 0.02

((~~*~~)) (a) Must be free of black medic, orchardgrass, timothy, *Agrostis* sp., *Poa trivialis*, brome, reed canarygrass, tall fescue, clover and meadow foxtail. Maximum allowable Canada bluegrass 0.02%.

((~~**~~)) (b) Maximum fluorescence levels as determined by breeder or variety owner.

((~~***~~)) (c) Must be free of Big, Canby and Sandberg bluegrass, dock, chickweed, crabgrass, plantain, annual bluegrass, velvetgrass, *Vulpia* sp., short-awn foxtail, and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105. An additional 0.07% of weedy *Bromus* spp. will be allowed.

((~~****~~)) (d) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.

(3) A sod seed analysis certificate is the basis of determining if a lot meets sod quality standards. This certificate is issued by the certifying agency and represents a purity analysis, a twenty-five gram noxious all weed all crop exam and a germination test, except a 50-gram noxious all weed all crop exam is required for fescues and ryegrass.

(4) In addition to a seed certification tag, seed meeting sod quality certified seed standards will be tagged with a special "sod quality seed" tag.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-415 ((~~What are the~~)) Standards for sudangrass certification((~~?~~)). (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-420 through 16-302-435 constitute the standards for sudangrass seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-445 ((~~What are the~~)) Standards for flax certification((~~?~~)). (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-450 through 16-302-455 constitute the standards for flax certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-460 ((~~What are the~~)) Standards for woody plants ((~~and~~)), Forbes, and other reclamation species certification((~~?~~)). (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-465 through 16-302-470 constitute the standards for woody plants and Forbes certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-465 Land requirements and field standards for woody plants ((~~and~~)), Forbes, and other reclamation species. (1) The life of a stand shall be unlimited as long as seventy-five percent of the plants present in the stand are those that were planted originally.

(2) To be eligible for the production of certified class of seed, a field must not have grown or been seeded to the same species during the previous four years for foundation, three years for registered, and two years for certified.

(3) A seed field inspection must be made the year of establishment and at least once each year that seed is to be harvested. This inspection will be made at a time when plant development allows for the detection of factors such as off-type varieties and weed contamination.

(4) Isolation for seed production the minimum distance from a different variety or wild hybridizing populations are as follows:

	Minimum of isolation-feet:	
	Fields of 2 acres or less	Fields of more than 2 acres
Foundation & registered	400	200
Certified	200	100

Volunteer plants may be cause for rejection or reclassification of a seed field.

(5) Specific field tolerances:

	Maximum ((~~ratio~~)) ration of heads or plants		
Factor	Foundation	Registered	Certified
Other varieties & off type	1/1000	1/500	1/250
Other kinds	1/2000	1/1000	1/500
(Inseparable other species)			
Prohibited noxious weeds	None found	None found	None found

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-470 Seed standards for woody plants ((~~and~~)), Forbes, and other reclamation species.

SEED STANDARDS

Crop	Minimum % Germination (((~~min.~~)))		Minimum % Pure seed (((~~min.~~)))		Maximum % Inert (((~~max.~~)))		Maximum % Weeds ((~~* (max.)~~)) (a)		Maximum % Other crops (((~~max.~~)))	
	F/R	C	F/R	C	F/R	C	F/R	C	F/R	C
Small burnet	80	80	95	95	5	5	((~~1~~)) 0.10	.2	.1	.25
Purple prairie clover	60((~~**~~)) (b)	60((~~**~~)) (b)	95	95	5	5	((~~.20~~)) 0.20	.5	.1	.25
Bitterbrush, antelope	75	75	95	95	5	5	0.10(a)	0.20	0.40 0.15(g)	1.25 0.50(g)
Balsamroot, arrowleaf sclerotinia	85	85	99	98	1.00 0	2.00 1/lb	0.02	0.04	0.10	0.20
Saltbush, four-wing	30	30	85	85	15	15	0.25(a)	.5(a)	.40 .15(g)	1.25 .50(g)
Gallardia(d)	60	60	90	90	10	10	0.20(a)	1.00(a)	.20 .10(g)	2.00 .25(g)
Prairie blazingstar or Gayfeather, thickspike (*Liatris pycnostachya*)(d)	60	60	85	80	15	20	0.30(a)	0.30(a)	0.20 0.10(g)	2.00 0.25(g)
Kochia, prostrate, forage Restricted noxious weeds	35	35	65	65	35	35	0.10 45/lb	0.20 91/lb	9/lb	25/lb
Artemesia	30	30	80	80	20	20	0.25	0.50(a)	0.40	1.25
sage, Louisiana	50	50	10	10	90	90	0.25(a)	0.50(a)	0.40	1.25
sagebrush, big mountain									0.25(g)	0.75(g)
sage, pitcher's (Salvia)	25	25	90	90	10	10	0.30(a)	0.30(a)	0.20(c) 0.10(g)	2.00(c) 25(g)

Crop	Minimum % Germination (((~~min.~~)))		Minimum % Pure seed (((~~min.~~)))		Maximum % Inert (((~~max.~~)))		Maximum % Weeds ((~~* (max.)~~)) (a)		Maximum % Other crops (((~~max.~~)))	
	F/R	C	F/R	C	F/R	C	F/R	C	F/R	C
Milkvetch, cicer Alfalfa & sweet clover Restricted noxious Sclerotia	75	70	99	98	1 0.10	2 0.10	0.01(a) None	0.20(a) 9/lb	0.01 9/lb 0.10(g)	0.20 45/lb 0.50(g)
Lupine Restricted noxious	80	80	98	98	2	2	0.25 0	0.50 9/lb	0.10	0.40
Mountain mahogany	60	60	85	85	15	15	0.25(a)	0.50(a)	0.40 0.15(g)	1.25 0.75(g)
Penstemon spp.	80(d)	80(d)	90	90	10	10	0.20	1.00	0.20(c) 90/lb(e)	2.00(c) 180/ lb(e)
Prairie-coneflower	60	60	90	90	10	10	0.20(a)	1.00 (a)	0.20(c) 0.10(g)	2(c) 2.00(g)
Safflower	-	85	-	99	-	1	-(a)	10(a)	- 1 in 2lbs(f)	0.10 1 in 1 lb(f)
Sainfoin Restricted noxious weeds	-	80	99	99	1	2	0.10(a)	0.20 9/lb	0	0.10
Sand-reed, prairie	70	70	90	90	0.10	0.10	0.10	0.25	0.10	0.50
Winterfat	40	40	60	60	40	40	0.25	0.50	40 0.15(g)	1.25 0.75(g)

((~~*~~)) (a) Must be free prohibited and restricted noxious weed seed.
((~~**~~)) (b) Includes total germination and hard seed.
(c) Never to exceed 0.25% other Forbes.
(d) Total viability by TZ.
(e) Sweet clover.
(f) Barley, oats, rye, triticale, or wheat.
(g) Other varieties or kinds.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-475 ((~~What are the~~)) Standards for rapeseed, mustard (*Brassica* spp. and *Sinapis alba*), and radish certification((~~?~~)). (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-480 through 16-302-490 constitute the standards for rapeseed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 06-15-136, filed 7/19/06, effective 8/19/06)

WAC 16-302-480 Field standards for rapeseed, mustard (*Brassica* spp. and *Sinapis alba*), and radish certification. Field standards for the production of rapeseed are as follows:

(1) A portion of a rapeseed field may be certified if the area to be certified is clearly defined.

(2) A field producing foundation, registered or certified rapeseed, also known as canola (*Brassica napus*), must be the minimum specified isolation distance from fields of any other variety of *Brassica napus*, from fields of the same variety that do not meet the varietal purity requirements for certification, as well as from fields of *Brassica rapa*, *Brassica oleracea*, and *Brassica juncea* as indicated in the following table:

Class	Fields of Cross Pollinated Varieties Including Hybrids	Fields of Self Pollinated Varieties
Foundation	1 mile	660 feet
Registered	1 mile	660 feet
Certified	1 mile	330 feet
Different class of same variety	165 feet	165 feet

These isolation distances are minimum and must be met in all cases.

(3) Volunteer plants may be cause for rejection or reclassification of a rapeseed field.

(4) Specific standards for rapeseed are:

	Maximum % permitted in each class		
Factor	**Foundation**	**Registered**	**Certified**
Other varieties((*)) (a)	None found((†)) (b)	None found((†)) (b)	1.00((%))

((*)) (a) Other varieties are considered to include *Brassica rapa*, *Brassica oleracea*, *Brassica juncea*, off-type plants of *Brassica napus* and plants that can be differentiated from the variety being inspected.

((†)) (b) None found means none found during the normal inspection procedures. None found is not a guarantee to mean the field inspected is free of the factor.

(5) Field standards for mustard and radish are as follows:

Class of Seed Produced	Maximum Other Varieties Permitted	Isolation Requirements
Foundation or registered	None	1320 feet
Certified	1:500	660 feet

(6) Inspection will be made by the certifying agency when the crop is in the early flowering stage.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-485 Land requirements for rapeseed, mustard (*Brassica* spp. and *Sinapis alba*), and radish certification. (1) Land requirements prior to planting for the production of rapeseed are as follows:

Class Planted	Class Produced	Years Field Shall be Free of Rapeseed
Breeder	Foundation	5
Foundation	Registered	4
Breeder, Foundation, Registered	Certified	3

(2) Land requirements prior to planting of mustard or radish are as follows:

Class produced	Years free from any cruciferous crop
Foundation, registered or certified	5 years
May be reduced to three years if following the same variety of the same or higher class.	

(3) For all classes no manure or other contaminating materials shall be applied during the establishment and production period of the rapeseed stand.

(((3))) (4) Reseeding of a rapeseed, mustard, or radish field due to failure or partial failure of the first seeding may be done by referring to the guidelines in WAC 16-302-045(5).

(((4))) (5) Ditchbanks, roadways, etc., adjacent to a certified rapeseed field must be free of volunteer rapeseed and prohibited noxious weeds.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

WAC 16-302-490 Seed standards for rapeseed, mustard (*Brassica* spp. and *Sinapis alba*), and radish certification. Seed standards for the production of rapeseed, mustard, and radish are as follows:

Purity		Foundation	Registered	Certified
Pure seed	(((Min.))) (minimum) %	((99.00%)) 99	((99.00%)) 99	((99.00%)) 99
Other crop and/or varieties	(((Max.))) (maximum)	9/lb	9/lb	18/lb
Inert matter	(((Max.))) (maximum) %	((1.00%)) 1	((1.00%)) 1	((1.00%)) 1
Weed seed	(((Max.))) (maximum) %	91/lb and not to exceed 0.01%	91/lb and not to exceed 0.01%	181/lb and not to exceed 0.25%
Prohibited noxious weeds (((1))) (a)		None found	None found	None found
Objectionable weeds (((2))) (b)	(((Max.))) (maximum)	5/lb	9/lb	18/lb
Chemical analysis (((3))) (c), (d), (e)				
Germination	(((Min.))) (minimum) %	((85.00%)) 85	((85.00%)) 85	((85.00%)) 85

Note:

((1))) (a) None found means none found during normal inspection procedures. None found is not a guarantee that the lot is free of noxious weed seeds.

((2))) (b) Objectionable weed seeds are defined as restricted noxious listed in WAC 16-301-050 plus: *Brassica nigra*, *Sinapis arvensis*, *Brassica juncea*, and *Raphanus raphanistrum*.

((3))) (c) Erucic acid content shall be less than 2% and glucosinolate content shall not be greater than thirty micromoles unless other tolerances are described by the plant breeder for each variety.

((4))) (d) Erucic acid and glucosinolate analysis must be conducted on clean seed.

((5))) (e) Erucic acid and glucosinolate analysis must be conducted at a WSDA approved laboratory.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-495 ((What are the)) Standards for red clover seed certification((?)). (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-500 through 16-302-520 constitute the standards for red clover seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-525 ((~~What are the~~)) Standards for white clover and trefoil seed certification((~~?~~)). (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-530 through 16-302-545 constitute the standards for white clover and trefoil seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

SEED CROPS CERTIFIED BY ((~~WSCIA~~)) THE WASHINGTON STATE CROP IMPROVEMENT ASSOCIATION

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-555 Labeling and sealing of certified seed of small grains by a grower. The certifying agency may authorize a grower who has his own equipment and conditions his own seed to label and seal certified seed of small grains. The grower's cleaning equipment must be approved by the department or its authorized agent according to WAC 16-302-125.

AMENDATORY SECTION (Amending WSR 10-08-028, filed 3/31/10, effective 5/1/10)

WAC 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification. (1) Field inspection ((~~standards~~)) timing for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed entered in the certification program are:

(a) For field pea and ((~~chickpea (garbanzo bean)~~)) lentil - When seed crop is in full bloom ((~~and at maturity~~));

(b) For ((~~lentil~~)) chickpea (garbanzo bean) - When seed crop is mature enough to differentiate leaf type (compound or simple leaf type) and in full bloom ((~~and at maturity~~));

(c) For soybean - When seed crop is in full bloom and/or of mature color;

(d) For open pollinated sorghum - When seed crop is in full bloom, and optionally again when seed crop begins to show mature color;

(e) For hybrid sorghum - Two inspections during bloom and one inspection after seed begins to show mature color;

(f) For small grains - When seed crop is fully headed and of mature color;

(g) For millet - One inspection during bloom and one inspection after seed begins to show mature color; and

(h) For buckwheat - One inspection when seed crop is in full bloom.

(2) Any condition or practice which permits or causes contamination of the seed crop, such as failure to prevent seed formation of prohibited noxious weeds, or excess weeds including excessive objectionable or restricted noxious weeds, or mechanical field mixing, is cause for rejection upon inspection. Fields rejected for jointed goatgrass ((~~at first inspection~~)) or jointed goatgrass hybrids are not eligible for reinspection and must remain ineligible for any production of certified classes of small grain seed until a reclamation procedure, as specified in subsection (3) of this section has been completed. Fields rejected for other causes will remain eligible for reinspection.

(3) The jointed goatgrass reclamation procedure includes the following:

(a) Each grower must develop a reclamation plan for his/her affected fields. The plan must be based on the most current recommendations of Pacific Northwest scientists and Washington State University cooperative extension as well as good management practices. The plan may include use of certified seed, spring cropping practices, and late tilling and planting. No particular program is specified or endorsed and compliance with a program does not assure eligibility for the production of certified classes of small grain seed. Eligibility is based solely upon results of field inspections as provided in (b) through (e) of this subsection.

(b) The rehabilitation and inspection program duration is three years for irrigated land and five years for dryland without production of certified small grain seed and the first year of certified seed production thereafter.

(c) Annual inspections of the affected fields are conducted by the certifying agency during the prescribed rehabilitation period at such time that the jointed goatgrass or jointed goatgrass hybrids would be most visible.

(d) Following the prescribed period of rehabilitation and during the first certified seed production year, a minimum of three field inspections are conducted by the certifying agency.

(e) If jointed goatgrass ((~~is~~)) or jointed goatgrass hybrids are found during any inspection as provided in (c) and (d) of this subsection, the rehabilitation program is determined unsuccessful or the field is declared ineligible and the rehabilitation and inspection program for that field must begin again at year one of the procedure.

(4) Field run lots of seed of the same variety may be commingled to facilitate storage and conditioning.

(5) No prohibited noxious weed seeds are permitted upon inspection for seed standards.

(6) Germination minimum refers to germination when sampled.

(7) If chemically controllable seed-borne diseases are noted upon inspection for field standards and seed standards for small grains, treatment of seed is required.

(8) Wild oat, isolated patches and borders must be removed or clearly marked so as to avoid harvesting with the rest of the field. If rejected, a reinspection is necessary to assure clean-up efforts are satisfactory. Spot checks are conducted on fields where heavy patches or contaminated borders were noted. Harvesting these areas with the rest of the field is cause for rejection of the entire field.

(9) The official laboratory providing seed analysis for the purpose of certification is the department.

(10) For all fields planted with varieties that contain the CLEARFIELD trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate

herbicide. CLEARFIELD is a trait that makes a plant resistant to the Imazamox herbicide.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-660 Field pea standards for seed certification. (1) The land, isolation, and field standards for field pea seed certification are:

CLASS	LAND MINIMUM YEARS	ISOLATION MINIMUM FEET	OFF-TYPE MAXIMUM PLANTS/ACRE	FIELD OTHER CROP MAXIMUM PLANTS/ACRE
Foundation	5((~~*~~)) (a)	((~~100**~~)) 50 (b)	None found	None found((~~***~~)) (c)
Registered	3((~~*~~)) (a)	((~~100**~~)) 50 (b)	10	None found((~~***~~)) (c)
Certified	2((~~*~~)) (a)	25((~~**~~)) (b)	20	None found((~~***~~)) (c)

((~~*~~)) (a) Spring peas also require 10 years land history with no production of Austrian pea for all classes.

((~~**~~)) (b) Reduce to three feet from fields producing a certified class of the same variety. In addition, each field pea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed field pea seed crop, the planting of small grain between field pea fields, except for the three feet of isolation, is recommended.

((~~***~~)) (c) For spring peas, no Austrian pea or rye is permitted. For Austrian peas, no rye is permitted.

(2) Seed certification standards for field pea are:

CLASS	OFF-TYPE MAXIMUM %	PURE SEED MINIMUM %	INERT MAXIMUM %	OTHER CROP MAXIMUM %	WEED MAXIMUM %	GERMINATION MINIMUM %
Foundation	None found	99.00	1.00	None found	None found	85
Registered	None found	99.00	1.00	None found	0.25((~~**~~)) (b)	85
Certified	0.03	99.00	1.00	0.10((~~*~~)) (a)	0.25((~~**~~)) (b)	85

((~~*~~)) (a) For spring peas, no Austrian pea or rye is permitted. For Austrian peas, no rye is permitted.

((~~**~~)) (b) Other tolerance for weed seed:

	OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/lb
Certified	2/1b

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-665 Lentil standards for seed certification. (1) Land, isolation, and field standards for lentil seed certification are:

CLASS	LAND MINIMUM YEARS	ISOLATION MINIMUM FEET	OFF-TYPE MAXIMUM PLANTS/ACRE	FIELD OTHER CROP MAXIMUM PLANTS/ACRE
Foundation	5	((~~100*~~)) 50 (a)	None found	None found
Registered	4	((~~100*~~)) 50 (a)	10	10((~~**~~)) (b)
Certified	3	25((~~*~~)) (a)	20	20((~~**~~)) (b)

((~~*~~)) (a) Reduce to three feet from fields producing a certified class of the same variety. In addition, each lentil field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed lentil seed crop, the planting of small grain between lentil fields, except for three feet of isolation, is recommended.

((~~**~~)) (b) Refers to barley and vetch, each.

(2) Seed certification standards for lentil are:

((~~OFF-TYPE~~)) CLASS	((~~PURE SEED~~)) OFF TYPE MAXIMUM SEEDS/LB	((~~INERT~~)) PURE SEED MINIMUM %	((~~OTHER CROP~~)) INERT MAXIMUM %	((~~WEED~~)) OTHER CROP MAXIMUM %	((~~GERMINATION~~)) WEED MAXIMUM %	((~~GERMINATION~~)) GERMINATION MINIMUM %
Foundation	None found	99.00((*)) (a)	1.00((*)) (a)	None found	None found	85.00
Registered	1	99.00((*)) (a)	1.00((*)) (a)	0.05((**)) (b)	0.05((***)) (b), (c)	85.00
Certified	4	99.00((*)) (a)	1.00((*)) (a)	0.10((**)) (b)	0.05((***)) (c)	85.00

((~~*~~)) (a) A total of three percent inert matter is allowed in samples containing decorticated seed provided total of all other inert matter does not exceed one percent.

((~~**~~)) (b) No vetch is permitted.

((~~***~~)) (c) Other tolerance for weed seed:

	OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/lb
Certified	2/lb

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-680 Open pollinated sorghum standards for seed certification. (1) Land, isolation and field standards for open pollinated sorghum seed certification are:

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	FIELD STANDARDS((~~***~~)) (c)	
			OFF-TYPE MAXIMUM RATIO	OTHER CROP MAXIMUM NO STANDARD
Foundation	1((~~*~~)) (a)	1,000((~~**~~)) (b)	None found	—
Registered	1((~~*~~)) (a)	1,000((~~**~~)) (b)	1 head/50,000	—
Certified	1((~~*~~)) (a)	1,000((~~**~~)) (b)	1 head/20,000	—

((~~*~~)) (a) Waived if the previous crop was grown from an equal or higher certified class of seed of the same variety.

((~~**~~)) (b) Refers to fields of other varieties or same variety which does not meet tolerance of off-types.

((~~***~~)) (c) Other tolerances for field standards:

	JOHNSONGRASS MAXIMUM	HEAD SMUT MAXIMUM	KERNEL SMUT MAXIMUM
Foundation	None found	None found	None found
Registered	None found	None found	None found
Certified	None found	1 head/10,000	1 head/2,500

(2) Seed standards for open pollinated sorghum seed certification are:

CLASS	OFF-TYPE MAXIMUM %	PURE SEED MINIMUM %	INERT MAXIMUM %	OTHER CROP MAXIMUM %	WEED MAXIMUM %	GERMINATION MINIMUM %
Foundation	None found	((~~97.00~~)) 97	((~~3.00~~**)) 3 (b)	None found	0.10	((~~80.00~~)) 80
Registered	None found	((~~97.00~~)) 97	((~~3.00~~**)) 3 (b)	0.03	0.10	((~~80.00~~)) 80
Certified	0.01((~~*~~)) (a)	((~~97.00~~)) 97	((~~3.00~~**)) 3 (b)	0.07((~~***~~)) (c)	0.10	((~~80.00~~)) 80

((~~*~~)) (a) Or two seeds per pound.

((~~**~~)) (b) Where two percent or more is cracked.

((~~***~~)) (c) Or ten seeds per pound.

AMENDATORY SECTION (Amending WSR 10-24-102, filed 12/1/10, effective 1/1/11)

WAC 16-302-685 Small grains standards for seed certification. (1) Land, isolation, and field standards for small grains (barley, oat, rye, triticale, and wheat) seed certification are:

LAND, ISOLATION, AND FIELD STANDARDS

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	OFF-TYPE MAXIMUM HEAD RATIO	OTHER CROP MAXIMUM HEAD RATIO	TRITICALE PLANTS PER ACRE IN BARLEY, WHEAT, AND OAT	WILD OAT MAXIMUM PLANTS/ACRE
Foundation	2((~~a~~)) (a)	((~~90~~)) 50 same genus((~~b~~)) (b) 3 different genus	None found	None found((~~e~~))(c)	None found((~~d~~)) (d)	None found
Registered	1((~~a~~)) (a)	10 same genus 3 different genus((~~b~~)) (b)	1/148,000	1/148,000((~~e~~))(c)	None found((~~d~~)) (d)	5
Certified	1((~~a~~)) (a)	10 same genus 3 different genus((~~b~~)) (b)	1/49,000	1/49,000((~~e~~))(c)	None found((~~d~~)) (d)	5

((~~a~~)) (a) Waived if the previous crop is grown from an equal or higher certified class of seed of the same variety.

((~~b~~)) (b) Each rye field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by six hundred sixty feet from other rye fields. Each triticale field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by three hundred feet from other triticale, rye and wheat fields for foundation and registered class, and ten feet for certified class, unless otherwise stated by the plant breeder.

((~~e~~))(c) Refers to other small grains, except that no rye or triticale is permitted in barley, oat, or wheat; and no vetch is permitted in barley, oat, rye, triticale, or wheat.

((~~d~~)) (d) Only one reinspection is allowed for foundation fields when triticale is found in the first inspection. Additional inspections are allowed if the field is downgraded to the registered or certified class.

(2) Small grains - Seed standards:

For CLEARFIELD varieties: For all classes - Each lot must pass the CLEARFIELD Confirm test by bioassay or PCR as defined by the trait owner. The CLEARFIELD Confirm test verifies that the seed is resistant to the Imazamox herbicide.

Class	Foundation	Registered	Certified
Pure seed (((~~(min.)~~))) % (minimum)	98((%))	98((%))	98((%))
Inert (((~~(max.)~~))) % (maximum)	2((%))	2((%))	2((%))
Off-type((~~[a] (max.)~~))) (a) % (maximum)	None found	2/lb	4/lb
Other small grain excluding triticale((~~[a] (max.)~~))) (a) (maximum)	None found	1/lb	2/lb
Triticale allowed in wheat((~~[f]~~)) (f)	None found	None found	1/1000 grams
Triticale allowed in oats and barley	None found	None found	1/lb
Other crop((~~[b] (max.)~~))) (b) % (maximum)	None found	0.03((%))	0.05((%))
Weed seed (((~~(max.)~~))) % (maximum)	0.01((%))	0.01((%))	0.03((%))
Objectionable weed seed((~~[e] (max.)~~))) (c) (maximum)	None found	None found	((~~1/lb~~)) None found
Wild oat (((~~(max.)~~))) (maximum)	None found	None found	None found((~~[d]~~)) (d)
Viability((~~[e] (min.)~~))) (e) % (minimum)	85((%))	85((%))	85((%))

((~~[a]~~)) (a) The combination of other small grain and off-type must not exceed 2/lb for registered class, and 4/lb for certified class. The tolerance for rye is none found in barley, oat, or wheat. The tolerance for rye is none found in triticale. The tolerance for triticale is none found in rye.

((~~[b]~~)) (b) Excluding off-type and other small grain. No vetch is allowed in small grain seed.

((~~[c]~~)) (c) Excluding wild oat.

((~~[d]~~)) (d) 1/lb for certified class oat.

((~~[e]~~)) (e) A certification certificate is issued upon receipt of either an official AOSA tetrazolium or germination test which meets minimum Washington viability standards. NOTE: State and federal seed laws require seed be labeled based on a germination test.

((~~[f]~~)) (f) In wheat, the foundation standard is based on a 1000 gram crop exam. The registered standard is based on a 500 gram crop exam. The certified standard is based on a 500 gram crop exam. If one triticale seed is found in 500 grams, a second 500 gram crop exam is required for a total 1000 gram crop exam. No triticale is allowed in the second 500 grams with the total standard of 1 triticale seed per 1000 grams allowed.

Note: For all classes the purity analysis is based on 100 grams examined. For registered and certified classes, noxious weed, vetch, off-type, and other small grain determinations are based on 500 grams examined except as allowed in footnote ((~~[f]~~)) (f) of this subsection. For foundation class, noxious weed, vetch, off-type, and other small grain determinations are based on 1000 grams examined.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-690 Chickpea standards for seed certification. Land, isolation, and field standards for chickpea seed certification are:

FIELD STANDARDS

Land Requirements (((~~(1)~~))) (a) (minimum years)		Isolation (((~~min.~~)) minimum feet) (e)	Off-type (plants/acre)	Other Crop (((~~(2)~~))) (b) (plants/acre)	Noxious (((~~(3)~~))) (c) Weeds (plants/acre)	Ascochyta Blight (((~~(4)~~))) (d)
Class						
Foundation	3	((~~100~~)) 50	none found	none found	none found	none found
Registered	2	50	5	none found	none found	none found
Certified	2	25	10	none found	none found	10 plants/acre

(((~~(1)~~))) (a) Shall not have been planted to chickpeas for three years for foundation class, and two years for registered and certified class, unless the previous crop is of the same variety and passes certification field standards of the same or higher generation.

(((~~(2)~~))) (b) Inseparable other crops.

(((~~(3)~~))) (c) Prohibited, restricted, and other weeds difficult to separate must be controlled.

(((~~(4)~~))) (d) None found in all classes of nontolerant varieties. Planting seedstock must be treated with Thiabendazole (((~~2-(4-triazoyl)~~))) (2-(4-thiazolyl) benzimidazole.

(e) Reduce to three feet from fields producing a certified class of the same variety. In addition, each chickpea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed chickpea seed crop, the planting of small grain between fields, except for three feet of isolation, is recommended.

FIELD INSPECTION

Foundation and registered class fields must have two field inspections: One at bloom stage and one at late pod stage. Certified class fields must be inspected at bloom stage plus another at pod stage if ascochyta blight is observed during the bloom stage inspection.

SEED STANDARDS

	Pure seed %	Inert %	Other crop	Weed seed	Germination %
Class ((~~(7)~~)) (c)					
Foundation	((~~99.00%~~)) 99	((~~1.0%~~)) 1	none found	none found	85((~~%~~))
Registered	((~~99.00%~~)) 99	((~~1.0%~~)) 1	none found	none found	85((~~%~~))
Certified	((~~99.00%~~)) 99	((~~1.0%~~)) 1	2 seeds/lb((~~(5)~~)) (a)	2 seeds/lb((~~(6)~~)) (b)	85((~~%~~))

((~~(5)~~)) (a) None found for Austrian pea, rye, or vetch.
((~~(6)~~)) (b) None found for nightshade berries or prohibited noxious weed seeds.
((~~(7)~~)) (c) All classes must be treated with Thiabendazole ((~~(2-(4-thiazoyl)~~)) (2-(4-thiazolyl) benzimidazole at the labeled rate).

AMENDATORY SECTION (Amending WSR 08-23-055, filed 11/14/08, effective 12/15/08)

WAC 16-302-740 ((~~What are the~~)) Standards for quality timothy seed certification((~~?~~)). (1) The general seed certification definitions and standards found in WAC 16-302-005 through 16-302-130, the grass seed certification standards found in WAC 16-302-320 through 16-302-390, and the requirements found in WAC 16-302-745 through 16-302-755 constitute the standards for quality timothy seed certification.

(2) Fees for quality timothy seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 10-20-149, filed 10/6/10, effective 11/6/10)

WAC 16-302-755 Standards for quality timothy seed. (1) Seed standards for quality timothy grass seed are as follows:

	Minimum % Purity	Minimum Viability by Germination or TZ Test	Maximum % Other Crop((~~*~~)) (a)	Maximum % Weed((~~**~~)) (b)
Timothy seed	97((~~%~~))	85((~~%~~))	((~~0.2%~~)) 0.20	((~~.02%~~)) 0.02
Purity component percentages are based on 1 gram sample size as prescribed by the AOSA rules.				

((~~*~~)) (a) Must be free of ryegrass, orchardgrass, *Agrostis* sp., *Poa* sp., brome, reed canarygrass, tall fescue, and meadow foxtail. Must be free of the above listed contaminants based upon a 50 gram examination.

((~~**~~)) (b) Must be free of alfilaria (redstem filaree), ((~~bromus~~)) *Bromus* sp., chickweed including all other species in the Caryophyllaceae family, henbit, *Poa* sp., wild carrot, and prohibited noxious weeds listed in WAC 16-301-045 and restricted noxious weeds listed in WAC 16-301-050. Must be free of the above listed contaminants based upon a 50 gram examination.

(2) A quality timothy seed analysis certificate is the basis of determining if a lot meets the quality timothy seed standards. This certificate is issued by the certifying agency and represents a purity test, a 50 gram noxious, all weed, all crop exam, and a viability test.

(3) Seed meeting quality timothy seed standards will be tagged with a "quality timothy seed" tag.

NEW SECTION

WAC 16-302-760 Standards for hybrid canola and hybrid rapeseed. (1) The general seed certification definitions and standards in this chapter are basic and together with this section through WAC 16-302-785 constitute the standards for hybrid canola and hybrid rapeseed.

(2) The fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

NEW SECTION

WAC 16-302-765 Definitions specific to hybrid canola or hybrid rapeseed. "A line" means the line or population that is male sterile.

"B line" means the male fertile line or population capable of maintaining male sterility.

"Canola and rapeseed" means the spring and winter varieties of *Brassica napus, Brassica rapa* and canola quality *Brassica juncea*.

"Commercial hybrid" means a hybrid that is one that is planted for any use except seed production.

NEW SECTION

WAC 16-302-770 Seed requirements and designation of classes of seed for hybrid canola or hybrid rapeseed. (1) Breeder or foundation seed must be used to establish all fields of hybrid canola or hybrid rapeseed for certification. The direction of the cross must remain unchanged throughout the certification program unless adequate data is provided to show that no change in variety performance results from the reversal of parentage.

(2) Only the certified class is recognized in the production of commercial hybrid seed.

NEW SECTION

WAC 16-302-775 Land requirements for the production of hybrid canola or hybrid rapeseed. (1) Fields producing foundation class must not be planted on land that had produced any cruciferous crops in the preceding five years.

(2) Fields producing certified class must not be planted on land that had produced any cruciferous crops in the preceding three years.

NEW SECTION

WAC 16-302-780 Field standards for the production of hybrid canola or hybrid rapeseed. (1) All hybrid fields must be inspected at the time of stem elongation and a second inspection must occur at the early flowering stage. The certifying agency may require additional inspections to address conditions including, but not limited to, pollen shedding plants in the A line, bloom timing of the A and B lines, and removal of B lines.

(2) All hybrid canola or hybrid rapeseed fields must be isolated from other canola or rapeseed crops by a minimum of one-half mile except for fields located within the Columbia Basin irrigation project must be isolated from other canola or rapeseed crops by two miles. Isolation is not required for fields that are the same hybrid utilizing the B lines.

(3) Fields must be planted in distinct rows with the A line and B line clearly delineated.

(4) Fields must be free from prohibited noxious weeds as listed in WAC 16-302-100 and free from *Galium* sp.

(5) Maximum plants of other varieties or crop kinds per ten thousand plants. This factor is based on a sixty thousand plant count (six replicates of ten thousand plants).

Maximum plants of other varieties including off types and A-line pollen shedders.	Maximum plants of other *Brassica* crop or weed species.
1.5:10,000	1:10,000

(6) Percent hybrid shall not be less than eighty percent.

(7) Fields cut or swathed prior to inspection are not eligible for certification.

NEW SECTION

WAC 16-302-785 Seed standards for hybrid canola or hybrid rapeseed. Seed standards are as follows:

Factor	Foundation	Certified
Pure seed, minimum (a)	99	99
Other crops, maximum	0.01	0.25
Inert matter, maximum	1	1
Weed seed, maximum	0.01	0.25
Objectionable noxious weed (b)	None found	18/lb
Prohibited noxious weeds	None found	None found
Germination	85	85

(a) Percent hybrid seed shall be determined by a method approved by the department.

(b) Objectionable noxious weeds are as defined in WAC 16-302-105 plus: *Brassica nigra*, *Sinapis arvensis*, *Brassica juncea*, and *Raphanus raphanistrum*.

NEW SECTION

WAC 16-302-790 Standards for sunflower seed production. (1) The general seed certification definitions and standards in this chapter are basic and together with this section through WAC 16-302-815 constitute the standards for sunflower seed.

(2) The fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

NEW SECTION

WAC 16-302-795 Definition of terms specific to sunflower seed production. "Breeder seed" means seed for hybrid production that is seed of male sterile, maintainer, and restorer lines maintained by the breeder.

"Commercial hybrid" means seed that is planted for any use except seed production utilizing hybrid seed.

"Foundation seed" means seed for hybrid production that is seed of male sterile, maintainer, and restorer lines produced from breeder or foundation seed.

"Hybrid seed" means seed that is the first generation of seed of a cross produced by controlling the pollination and by combining two or more lines, varieties, or species.

NEW SECTION

WAC 16-302-800 Land requirements for sunflower seed production. Land to produce any class of sunflower seed must not have grown sunflowers the previous three years or the land must have grown two intervening irrigated crops.

NEW SECTION

WAC 16-302-805 Isolation requirements for sunflower seed production. Fields of all classes of hybrid or open pollinated sunflowers must be isolated from all other sunflower fields, noncertified sunflower production including home garden plantings, and all wild-type sunflowers by a distance of one and one-fourth miles except for fields within the Columbia Basin irrigation project which must be isolated from the above by two miles. Isolation is not required for fields utilizing the same restorer line.

NEW SECTION

WAC 16-302-810 Field tolerances and requirements for sunflower seed production. (1) Only breeder or foundation seed may be used to establish a hybrid field to produce certified seed.

(2) For hybrid varieties the certified generation produced from breeder or foundation seed produces a commercial hybrid and is not eligible for further certification.

(3) For open pollinated sunflower varieties, one field inspection must be made after fifty percent of the plants are in bloom but before the plants are fully mature.

(4) For hybrid sunflower varieties at least two inspections must be made. The first inspection is during the very early bloom stage and the second inspection is during the full bloom stage.

(5) For hybrid sunflower varieties, at least fifty percent of the male parent plants must be flowering and producing pollen when the female parent is in full bloom.

(6) Fields must be free of prohibited noxious weeds listed in WAC 16-302-100. Objectionable weeds listed in WAC 16-302-105 and common weeds difficult to separate must be controlled.

(7) Different sunflower varieties cannot always be differentiated at field inspection. When differences can be distinguished, the maximum of other varieties of off-types allowed is:

Off-types	Open pollinated varieties	Female seed parent		Pollinating parent
		Foundation	Certified	
Other than pollen shedding female plants		1:2,000	1:2,000	1:2,000
Pollen shedding female plant		1:1,000	4:1,000	
Total (including above)	5:1,000	1:1,000	4:1,000	1:2,000

(8)(a) Percent hybridity shall not be less than seventy-five percent. If the field inspection shows one or more of the following, the applicant may request that seed certification be based on the results of a precertification grow-out test approved by the department:

(i) Inadequate isolation;

(ii) Too few male parent plants shedding pollen when female parent plants are receptive; or

(iii) Excess off-types not to include wild-types.

(b) At least two thousand plants must be observed and meet the standards in the table below before hybrid and inbred seed can be certified from fields with problems listed in (a) of this subsection.

	Maximum % Permitted	
Factor	Hybrid	Inbred
Sterile plant	5	-----
Sterile or fertile plants	-----	5
Morphological off-types	0.50	0.50
Wild types	0.20	0.20
Total (including above types)	5	5

NEW SECTION

WAC 16-302-815 Seed standards for sunflower seed production. (1) Samples submitted for certification must be a minimum of one thousand grams.

(2) Seed standards for sunflowers are as follows:

Factor	Foundation	Registered	Certified
Pure seed - Minimum %	98	98	98
Inter matter - Maximum %	2	2	2
Other varieties* - Maximum	1 seed/lb.	1 seed/lb.	6 seeds/lb. of which may not consist of more than 1 purple or white seed
Other crop seed - Maximum	1 seed/lb.	1 seed/lb.	6 seeds/lb.
Corn or castor bean seed	None found	None found	None found
Weed seed - Maximum %	None found	None found	0.10
Germination - Minimum %	85	85	85

* Varietal differentiation cannot always be distinguished in a seed sample. When varietal differences are evident this standard applies.

NEW SECTION

WAC 16-302-820 Standards for camelina seed production. (1) The general seed certification definitions and standards in this chapter are basic and together with this section through WAC 16-302-835 constitute the standards for camelina seed.

(2) The fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

NEW SECTION

WAC 16-302-825 Land requirements for camelina seed production. Camelina shall be planted on land on which the previous crop was another kind, or was planted with a foundation or registered class of seed of the same variety.

NEW SECTION

WAC 16-302-830 Field requirements for camelina seed production. (1) Isolation - A field producing any class of certified seed must be at least fifty feet from any other variety or fields of the same variety that do not meet the varietal purity requirement for certification.

(2) Poor stands, poor vigor, lack of uniformity, excess weeds, or conditions which are apt to make inspection inaccurate or bring certified seed into disfavor shall be cause for rejection.

(3) Field standards are as follows:

	Maximum permitted in each class		
Factor	**Foundation**	**Registered**	**Certified**
Other varieties*	1:5000	1:2000	1:1000
Other inseparable crops	None	0.05%	0.10%

* Other varieties shall be considered to include plants that can be differentiated from the variety being inspected. However, other varieties shall not include variations which are characteristic of the variety being tested. Fields must be free of prickly lettuce, fanweed, and shepherds purse. Fields will be inspected at full bloom. Fields swathed prior to inspection are not eligible for certification. Conditions such as poor stand, excessive weeds or insect damage that prevent varietal determination may be cause for rejection.

NEW SECTION

WAC 16-302-835 Seed standards for camelina seed production. The following are the seed standards for camelina seed production:

	Standards permitted in each class		
Factor	**Foundation**	**Registered**	**Certified**
Pure seed (minimum)%	98	98	97
Other crop (maximum)%	0.10	0.20	0.30
Inert matter (maximum)%	1	1	1
Weed seed (maximum)%	0.05	0.05	0.05
Objectionable weeds	None	None	None
Germination (minimum)%*	85	85	85

* A tetrazolium test may be used in lieu of a germination test for certification.

WSR 14-20-051
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 25, 2014, 10:24 a.m., effective October 26, 2014]

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

Purpose: Amends WAC 181-82-110 due to drafting error. A reference in the opening paragraph refers to the section applying to nonprovisional teachers (employed for less than three years). The section is intended to apply to all teachers.

Citation of Existing Rules Affected by this Order: Amending WAC 181-82-110.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 14-15-078 on July 16, 2014.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: September 25, 2014.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-11-106, filed 5/21/14, effective 6/21/14)

WAC 181-82-110 School district response and support for nonmatched endorsements to course assignment of teachers. Individuals with initial, residency, endorsed continuing, or professional teacher certificates who ((~~have completed provisional status~~)) are employed with a school district under RCW ((~~28A.405.220~~)) 28A.405.210 may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(1) A designated representative of the district and any such teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(2) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(3) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned;

(4) A teacher who has completed twenty-four quarter credit hours (sixteen semester credit hours) of course work applicable to a special education endorsement shall be eligible for a preendorsement waiver from the special education office per chapter 392-172A WAC which will allow that person to be employed as a special education teacher. All remaining requirements for special education endorsement shall be completed within five years.

WSR 14-20-053
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 25, 2014, 1:54 p.m., effective October 26, 2014]

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

Purpose: Revise and update WAC 308-100-130, the list of additional traffic violations that are considered "serious traffic violations" for purposes of chapter 46.25 RCW, regarding commercial driver's licenses and the operation of commercial motor vehicles.

Citation of Existing Rules Affected by this Order: Amending WAC 308-100-130.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.010, 46.25.140.

Adopted under notice filed as WSR 14-17-074 on August 18, 2014.

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

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

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

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

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

Date Adopted: September 25, 2014.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-10-085, filed 5/6/09, effective 6/6/09)

WAC 308-100-130 Serious traffic violations. In addition to the violations enumerated in RCW 46.25.010((~~(16)~~)), "Serious traffic violation" shall include:

(1) Negligent driving in the first or second degree, as defined by RCW 46.61.5249, ((~~or~~)) 46.61.525, or 46.61.526;

(2) Following too closely, as defined by RCW 46.61.145, or 46.61.635;

(3) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.365, 46.61.370, ((~~or~~)) 46.61.375, or 46.61.385;

(4) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(5) Speed too fast for conditions, as defined by RCW 46.61.400;

(6) Improper lane change or travel, as defined by RCW 46.61.070, 46.61.105, 46.61.140, 46.61.290, or 46.61.608; ((~~and~~))

(7) Improper or erratic lane changes, including:

(a) Improper overtaking on the right, as defined by RCW 46.61.115;

(b) Improper overtaking on the left, as defined by RCW 46.61.110, 46.61.120, or 46.61.130; and

(c) Improper driving to left of center of roadway, as defined by RCW 46.61.125;

(8) Reckless endangerment of emergency zone workers, as defined by RCW 46.61.212;

(9) Reckless endangerment of roadway workers, as defined by RCW 46.61.527; and

(10) A conviction of an administrative rule or local law, ordinance, rule, or resolution of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this section.

WSR 14-20-058
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[PEBB Admin 2014-02—Filed September 25, 2014, 4:17 p.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: Amends existing rules and adds two new rules in Title 182 WAC specific to the public employees benefits board (PEBB) program with the following effect:

1. Implement PEBB policy resolution to amend the error correction process to address retroactive enrollment.

2. Makes technical amendments to:

- Clarify requirements for submitting a medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) enrollment form.
- Clarify which employing agency is responsible for payment of the employer contribution when an employee transfers between agencies.
- Clarify which individuals are not eligible as employees for participation in PEBB benefits.
- Add an exception in the rule that prohibits dual enrollment in a PEBB health plan to address instances where a dependent is dual eligible for a partial month.

- Replace the phrase "comprehensive group medical coverage" with "employer-based group health insurance" throughout.
- Clarify that the employer contribution toward PEBB benefits ends on the last day of the month when an individual ceases to be eligible.
- The retiree dental rule to allow early termination of dental if the retiree becomes eligible for employer dental.
- The retiree deferral rules to provide clarity regarding the effective date of a deferral.
- Clarify that a retiree's dependent may not enroll in dental coverage only.
- The rule that authorizes employees to enroll in PEBB retiree insurance in the case of a retroactive disability retirement awarded by the department of retirement systems or a higher education authority so it is clear that the retirement must be due to disability.
- Clarify that references to "registered domestic partner" includes both a state registered domestic partner and 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.
- Clarify the notice required when a dependent is no longer eligible for PEBB benefits.
- The special open enrollment rules to account for dependents that move from the United States to outside the United States.
- Clarify when coverage begins for a child enrolled in coverage based on a national medical support notice or court order.
- The surcharge rules to account for issues identified during the implementation phase.
- The wellness rules to account for issues identified during the implementation phase.
- Provide additional definitions of terms used in the rules.
- The appeal rules to address appeals regarding a denial of FSA or DCAP enrollment.
- Clarify all affected rules to appropriately include "charter schools" with school districts and educational service districts by adding a definition of school districts which includes charter schools.
- Add general hearing rules and procedures that apply to an administrative hearing of a PEBB appeal committee decision.
- To require that forms and paperwork must be received within the stated timelines instead of submitted or sent within the timeline.

3. In addition to these specific changes, the health care authority conducted a full review of these chapters and made some changes for readability.

Citation of Existing Rules Affected by this Order: Amending chapters 182-08, 182-12, and 182-16 WAC.

Statutory Authority for Adoption: RCW 41.05.160.

Other Authority: 3ESSB 5034 and PEBB policy resolutions.

Adopted under notice filed as WSR 14-16-073 on July 31, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 22, Amended 36, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 22, Amended 37, Repealed 1.

Date Adopted: September 25, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

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 his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.~~)) "Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"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~~)) health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, charter schools, and educational service districts participating in PEBB insurance coverage under contractual agreement 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 ((~~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, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which 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.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

• Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and

• The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

((~~"Premium surcharge implementation period" means the period from April 1 through May 15, 2014, when subscribers may change their health plan enrollment and premium payment plan election to be effective July 1, 2014. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan and enroll in or change their premium payment plan election.~~))

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary

on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"School district" means public schools as defined in RCW 28A.150.010 which includes charter schools established under chapter 28A.710 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan, and may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other ((~~comprehensive group medical coverage as required~~)) employer-based group medical insurance as allowed under WAC 182-12-128, or is on approved educational leave and obtains ((~~comprehensive group health plan coverage~~)) other employer-based group health insurance as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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 become due the first of the month in which 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.

(a) If an employee elects optional coverage as described in WAC 182-08-197 (1)(a) or (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 health care authority (HCA). If a subscriber's account is past due and it is determined by the authority that full payment of the unpaid balance in a lump sum ((~~is~~)) would be considered a hardship, the ((~~HCA~~)) authority 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:

(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).

(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 deputy director or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium.

(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 deputy director or designee.

(d) HCA errors will be corrected by returning all excess premiums paid by the employing agency, subscriber, or beneficiary.

(e) Employing agency errors will be corrected by returning all excess premiums paid by the employee or beneficiary.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-08-185 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge when any enrollee engages in tobacco use.

(a) A subscriber must attest to whether any enrollee on his or her public employees benefits board (PEBB) medical plan engages in tobacco use. The subscriber must attest during the following times:

(i) ((~~During the premium surcharge implementation period from April 1 through May 15, 2014;~~

~~(ii) No later than thirty-one days after an employee is~~)) When an employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits submits an enrollment form to add PEBB medical as described in WAC 182-08-197 (1) or (3). If the attestation results in a surcharge it will take effect the same time PEBB medical begins;

(((~~(iii)~~))) (ii) When there is a change in the tobacco use status of any enrollee on the subscriber's PEBB medical plan((~~; and~~

~~(iv) Whenever a dependent is enrolled in PEBB medical coverage on the subscriber's account~~)). If the change in status results in a surcharge being added or removed, the change to the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day;

(iii) When a subscriber submits an enrollment form to add a dependent to his or her PEBB medical as described in WAC 182-12-262. If enrolling the dependent results in a surcharge being added, it will take effect the same time PEBB medical begins;

(iv) When an enrollee elects to continue health plan coverage as described in WAC 182-12-146. If the attestation results in a surcharge it will take effect the same time PEBB medical begins. This action is required only if the enrollee has not previously attested as described in (a) of this subsection;

(v) When an employee or retiree submits an enrollment form to enroll in PEBB medical as described in WAC 182-12-171 (1)(a), 182-12-200 (2)(a) and (b), or 182-12-205 (4)(a), (b), and (d). If the attestation results in a surcharge it will take effect the same time PEBB medical begins. This action is required only if the retiree has not previously attested as described in (a) of this subsection; and

(vi) When a survivor spouse, registered domestic partner, or dependent child submits an enrollment form to enroll in PEBB medical as described in WAC 182-12-250(5) or 182-12-265. If the attestation results in a surcharge it will take effect the same time PEBB medical begins. This action is required only if the survivor has not previously attested as described in (a) of this subsection.

Exception: (1) A subscriber enrolled in both medicare parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.

(2) An employee who waives medical enrollment according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account until the employee enrolls in a PEBB medical plan.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in subsection (1)(a) of this section.

((Note: ~~A subscriber, who failed to submit or submitted an inaccurate attestation, may submit an attestation by August 29, 2014, to seek reimbursement for tobacco use premium surcharges imposed in July and August of 2014.~~))

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products so a subscriber can avoid the tobacco use premium surcharge:

(i) All enrollees have access to a free tobacco cessation program through their medical plan. A subscriber can avoid the surcharge if enrollees who use tobacco products ((~~enroll~~)) are enrolled in their plan's tobacco cessation program.

(ii) ((~~The PEBB program will work with a subscriber to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products.~~

~~(iii)~~))) A subscriber may contact the PEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.

(2) A subscriber's account will incur a premium surcharge if an enrolled spouse or registered domestic partner chose not to enroll in employer-based group medical insurance that has premiums less than ninety-five percent of the UMP Classic's premiums and benefits with an actuarial value of at least ninety-five percent of the actuarial value of the UMP Classic's benefits.

(a) A subscriber ((~~who enrolls~~)) with a spouse or registered domestic partner enrolled under his or her PEBB medical must attest during the following times:

(i) ((~~During the premium surcharge implementation period from April 1 through May 15, 2014;~~

~~(ii) No later than thirty-one days after the employee is newly eligible or regains eligibility for the employer contribution towards PEBB benefits as described in WAC 182-08-197;~~

~~(iii) Whenever a spouse or domestic partner is enrolled in medical coverage on the subscriber's account;~~

~~(iv)~~))) When an employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits submits an enrollment form to add PEBB medical as described in WAC 182-08-197 (1) or (3). If the attestation results in a surcharge it will take effect the same time PEBB medical begins;

(ii) When a subscriber submits an enrollment form to add a spouse or registered domestic partner to his or her PEBB medical as described in WAC 182-12-262. If enrolling the spouse or registered domestic partner results in a surcharge being added, the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day;

(iii) During the annual open enrollment((~~; or~~

~~(v)~~)). If attesting results in a surcharge being added or removed, the change to the surcharge begins January 1st of the following year; and

(iv) When there is a change in the spouse's or registered domestic partner's employer-based group medical insurance.

If attesting results in a surcharge being added or removed, the change to the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

Exception: (1) A subscriber enrolled in both medicare parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.

(2) An employee who waives medical enrollment according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account until the employee enrolls in a PEBB medical plan.

(3) An employee who covers his or her spouse or registered domestic partner who has waived his or her own PEBB medical must attest, but a premium surcharge will not be applied.

(b) A premium surcharge will be applied to the account of subscribers who do not attest as described in (a) of this subsection.

((Note: A subscriber, who failed to submit or submitted an inaccurate attestation, may submit an attestation by August 29, 2014, to seek reimbursement for the WAC 182-08-185(2) premium surcharges imposed in July and August of 2014.))

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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)) the employing agency must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period. Employees who do not return 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)) effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (3) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life and basic long-term disability (LTD) insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance coverage begins on that date;

(c) Optional life and optional LTD insurance is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date of the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Optional insurance coverage is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue optional LTD insurance coverage during the period of leave, optional LTD insurance coverage is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional insurance coverage under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending account (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 subsections (1) and (3)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of his or her eligibility for PEBB benefits, the state agency may only collect the employee contribution for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of optional life insurance or optional LTD insurance coverage elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When premium refunds are due to the employee, the optional ((~~coverage~~)) life insurance or optional LTD insurance vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premium refunds.

(3) **Recourse.**

(a) 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 correction of an enrollment error is limited as described in subsection (1) of this section, the employing agency must work with the employee, and the authority, to implement retroactive insurance coverage within the following parameters:

(i) Retroactive enrollment in a PEBB health plan;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid for medical and dental premiums; or

(iv) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-190 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible employees. State agencies and employer groups that participate in the public employees benefits board (PEBB) program under contract with the health care authority (HCA) must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions for state agencies set by the HCA are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each employee of a state agency eligible under WAC 182-12-131 or each eligible employee of a state agency on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution as described in WAC 182-12-138. The entire employer contribution is due and payable to HCA even if 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~~)) medical insurance as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined 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 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-197 When must a newly eligible employee((~~s~~)), or an employee((~~s~~)) who regains eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete enrollment forms? An employee((~~s~~)) who ((~~are~~)) is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) ((~~The~~)) An employee must complete the required forms indicating enrollment elections and return the forms to his or her employing agency. Forms must be received by the employing agency no later than thirty-one days (sixty days for life insurance) after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) ((~~The~~)) An employee may enroll in optional life and optional long-term disability (LTD) insurance up to the guaranteed issue without evidence of insurability if enrollment forms are returned to the employee's employing agency as required. An employee may apply for enrollment in optional life and LTD insurance coverage over the guaranteed issue at any time during the calendar year by submitting the evidence of insurability form to the vendor for approval.

((~~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. The form must be received by his or her state agency no later than thirty-one days after ((~~becoming~~)) the employee becomes eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must

return the required enrollment form to his or her state agency or PEBB designee. The form must be received by the state agency or PEBB designee no later than thirty-one days after ((becoming)) the employee becomes eligible for PEBB benefits.

(b) If a newly eligible ((employee does not return enrollment forms to his or her)) employee's employing agency does not receive the employee's forms indicating medical, dental, and LTD choice within thirty-one days and life insurance choice within sixty days of the employee becoming eligible, his or her coverage will be enrolled as follows:

(i) Medical enrollment will be Uniform Medical Plan Classic;

(ii) Dental enrollment will be Uniform Dental Plan;

(iii) Basic life insurance;

(iv) Basic long-term disability insurance; and

(v) Dependents will not be enrolled.

(2) The employer contribution toward insurance coverage ends according to WAC 182-12-131. When an employee's employment ends, participation in the state's salary reduction plan ends.

(3) When an employee loses and later regains eligibility for the employer contribution toward insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2):

(a) The employee must complete and return the required forms indicating enrollment elections to his or her employing agency except as described in (d) of this subsection. Forms must be received no later than thirty-one days after ((regaining)) the employee regains eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability;

(ii) An employee who was eligible to continue optional life under continuation coverage but discontinued that insurance coverage must submit evidence of insurability;

(iii) An employee who was eligible to continue optional LTD under continuation coverage but discontinued that insurance coverage must submit evidence of insurability for optional LTD insurance when he or she regains eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return 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 PEBB coverage. This includes movement of employees between any entities described in WAC 182-12-111 and participating in PEBB benefits. Insurance coverage elections also remain the same when employees have a break in employment that does not interrupt his or her employer contribution toward PEBB insurance coverage.

(c) If an ((employee does not return the required forms to his or her)) employee's employing agency does not receive the forms within thirty-one days of the employee 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. The form must be received by the employee's state agency or PEBB designee no later than thirty-one days after ((becoming)) the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or FSA administrator of his or her employment transfer within the current plan year.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

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 public employees benefits board (PEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change his or her health plan. Employees submit the enrollment forms to their employing agency. All other subscribers submit the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the ((end)) last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** 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 cre-

ates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received 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. 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, 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 their employer contribution toward employer-based group health ((~~coverage~~)) insurance;

(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 subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(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 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);

(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;

(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.

((~~(3) **During the premium surcharge implementation period**: Subscribers may change health plans during the premium surcharge implementation period from April 1 through May 15, 2014. The subscriber must submit the required enrollment forms to change his or her health plan no later than May 15, 2014. Enrollment in the new health plan will begin July 1, 2014.~~))

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-08-199 When may an employee enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? An employee who is eligible to participate in the state's salary reduction plan as described in WAC 182-12-116 may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114, as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may enroll in or change his or her election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. For the state's premium payment plan, the required enrollment form must be submitted to his or her employing agency. To enroll or reenroll in medical FSA or DCAP the employee must submit((~~, in paper or online,~~)) the required enrollment form ((~~to enroll or reenroll~~)) to his or her employing agency or public employees benefits board (PEBB) designee. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election will be effective January 1st of the following year.

(3) **During a special open enrollment:** An employee may enroll or change his or her election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required enrollment forms as instructed on the forms. The required enrollment forms must be received no later than sixty days after the event occurs. The employee must provide evidence of the event that created the special open enrollment.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 152 without regard to the income limitations of that section. It does not include a ((~~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. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership when the dependent is a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability;

(ii) Employee's dependent no longer meets ((~~public employees benefits board (~~))PEBB((~~)~~)) eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a registered domestic partner who is a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for their employer contribution toward employer-based group health ((~~coverage~~)) insurance;

(v) Employee or an employee's dependent has a change in enrollment under another ((~~employer~~)) employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Employee or an employee's dependent has a change in residence that affects health plan availability;

(vii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(viii) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(ix) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(x) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(xi) Employee or an employee's dependent becomes entitled to coverage under medicare, or the employee or an employee's dependent loses eligibility for coverage under medicare, or enrolls in or cancels enrollment in a medicare Part D plan;

(xii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiii) ((~~Employee has a change in the cost of insurance coverage because of a premium surcharge;~~

(~~xiv~~))) Employee or an employee's dependent experiences a disruption of care that could function as a reduction in benefits for the employee or the employee's dependent for a specific condition or ongoing course of treatment. The employee may not change their health plan election if the

employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

• Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

• Transplant within the last twelve months; or

• Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

• Recent major surgery still within the postoperative period of up to eight weeks; or

• Third trimester of pregnancy.

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. The enrollment or change in election will be effective the first day of the month following ((~~approval by the FSA administrator~~)) the later of the event date or the date the form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a registered domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

(v) A court order or national medical support notice requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or change his or her election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following ((~~approval by the DCAP administrator~~)) the later of the event date or the date the form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under another ((~~employer~~)) employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(iv) Employee changes dependent care provider; the change to DCAP can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (d)(1) through (5), incorporating the rules of Section 152 (b)(1) through (3) of the IRC.

(((~~(4) **During the premium surcharge implementation period**: An eligible employee may enroll in or change his or her election under the state's premium payment plan from April 1 through May 15, 2014. The employee must submit, in paper or online, the required enrollment form to enroll or change his or her election no later than May 15, 2014. The enrollment or change in election will begin July 1, 2014.~~))

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment or for faculty employed by more than one institution of higher education? Employing agencies responsible for paying the employer contribution:

(1) **For eligible employees changing agencies:** When an eligible employee's employment relationship terminates with an employing agency at any time before the end of the month for which a premium contribution is due and that employee transfers to another agency, the losing agency is responsible for the payment of the contribution for that employee for that month. The receiving agency ((~~would~~)) is not ((~~be~~)) liable for any employer contribution for that eligible employee until the month following the transfer.

(2) **For eligible faculty employed by more than one institution of higher education:**

(a) When a faculty is eligible for the employer contribution during an anticipated work period (quarter, semester or instructional year), under WAC 182-12-131(3), one institution will pay the entire cost of the employer contribution if the employee ((~~would be~~)) is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions during the anticipated work period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to the health care authority (HCA).

(b) When a faculty is eligible for the employer contribution during the summer or off-quarter/semester, under WAC 182-12-131 (3)(c), one institution will pay the entire cost of the employer contribution if the employee ((~~would be~~)) is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions throughout the instructional year or equivalent nine-month period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

(c) When a faculty is eligible through two-year averaging under WAC 182-12-131 (3)(d) for the employer contribution, one institution will pay the entire cost of the employer contribution if the employee ((~~would be~~)) is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes to coverage based on its percentage of the employee's total work at all institutions throughout the preceding two academic years. This division of the employer contribution begins the summer quarter or semester following the second academic year and continues through that academic year or until eligibility under two-year averaging ceases.

Note: "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters, in that order.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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~~)) applications through the evaluation criteria described in WAC 182-08-240. To apply, ((~~the~~)) employer groups must submit the documents and information described in this rule to the public employees benefits board (PEBB) program at least sixty days before the requested coverage effective date. ((~~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~~)) districts or educational service districts are required by the superintendent of public instruction to purchase insurance coverage provided by the authority, ((~~the school district is~~)) they are required to submit documents and information described in subsections (1)(c), (2), and (3) of this section.

(1) A letter of application that includes the information described in (a) through (d) of this subsection:

(a) A reference to the employer group's authorizing statute;

(b) A description of the organizational structure of the employer group and a description of the employee bargaining unit(s) or group of nonrepresented employees for which the employer group is applying;

(c) Employer tax ID number (TIN); and

(d) A statement of whether the employer group is requesting only medical or medical, dental, life and 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 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 three hundred one to two thousand five hundred eligible employees must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months; and

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history.

(c) Employer groups with greater than two thousand five hundred eligible employees must submit to an actuarial evaluation of the group. 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 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-08-245 Employer group participation requirements. This section applies to an employer group as defined in WAC 182-08-015 that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group must:

(a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for insurance coverage in accordance with 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. School districts and educational service districts must collect an amount equal to the premium surcharge(s) applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow 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 enroll-

ment. Employer groups must collect an amount equal to the premium surcharge(s) applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) If an employer group wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(4) The employer group must maintain participation in PEBB insurance coverage for at least one full year. An employer group may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group must provide written notice to the PEBB program at least sixty days before the requested termination date.

(5) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in COBRA benefits and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in PEBB medical and dental as COBRA enrollees for the remainder of the months available to them based on their qualifying event.

(6) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than a school district or educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance coverage cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

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 his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.~~)) "Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"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~~)) health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, charter schools, and educational service districts participating in PEBB insurance coverage under contractual agreement 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 ((~~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, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"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.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

• Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and

• The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

((~~"Premium surcharge implementation period" means the period from April 1 through May 15, 2014, when subscribers may change their health plan enrollment and premium payment plan election to be effective July 1, 2014. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan and enroll in or change their premium payment plan election.~~))

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"School district" means public schools as defined in RCW 28A.150.010 which includes charter schools established under chapter 28A.710 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan, and may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as insti-

tutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other ((~~comprehensive group medical coverage as required~~)) employer-based group medical insurance as allowed under WAC 182-12-128, or is on approved educational leave and obtains ((~~comprehensive group health plan coverage~~)) other employer-based group health insurance as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-111 Eligible entities and individuals. The following entities and individuals shall be eligible for public employees benefits board (PEBB) benefits subject to the terms and conditions set forth below:

(1) **State agencies.** State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) **Employer groups.** Employer groups may apply to participate in insurance coverage for groups of employees described in subsection (a) of this section 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 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 ((~~are required to~~)) must 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 described in WAC 182-08-235 (1)(c), (2), and (3). Employer group applications are subject to review and approval by the health care authority (HCA). With the exception of ((~~K-12~~)) a school district((~~s and~~)) or educational service district((~~s~~)), the authority will approve or deny an employer group's application based on the employer group ((~~eligibility~~)) evaluation criteria described in WAC 182-08-240.

(c) Employer groups participate through a contract with the authority as described in WAC 182-08-245.

(3) **School districts and educational service districts.** In addition to subsection (2) of this section, the following applies to school districts and educational service districts:

(a) The HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size 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 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 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 insurance coverage as long as they remain eligible under that section.

(6) **Individuals and entities ((~~that are~~)) not eligible as employees include:**

(a) Adult family home providers as defined in RCW 70.128.010;

(b) Unpaid volunteers;

(c) Patients of state hospitals;

(d) Inmates in work programs offered by the Washington state department of corrections as described in RCW 72.09.100 or an equivalent program administered by a local government;

(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;

(f) Students of institutions of higher education as determined by their institutions; and

(g) Any others not expressly defined as employees under RCW 41.05.011.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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.

Exception: An enrolled dependent who becomes eligible for PEBB benefits as an employee as described in WAC 182-12-114 may be dual-enrolled in PEBB coverage for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

(2) An eligible employee may waive medical and enroll as a dependent on the coverage of his or her eligible spouse, eligible ((~~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 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 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-12-128 When may ((~~an~~)) employees waive or enroll in public employees benefits board (PEBB) medical ((~~plans~~))? 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~~)) are enrolled in other ((~~comprehensive~~)) employer-based group medical ((~~coverage~~)) insurance.

(1) Employees may waive enrollment in PEBB medical by submitting the 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 required enrollment form they submit to their employing agency. The enrollment form must be received 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 required enrollment form to~~)) period. The required enrollment form must be received by 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.

(((~~d) **During the premium surcharge implementation period:** Employees may waive PEBB medical coverage during the premium surcharge implementation period from April 1 through May 15, 2014. The employee must submit the required enrollment form no later than May 15, 2014. Medical coverage will be waived beginning July 1, 2014.~~))

(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 required forms, the PEBB program will require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment((~~;~~

~~(c) During the premium surcharge implementation period from April 1 through May 15, 2014. The employee must submit the required enrollment forms no later than May 15, 2014. Enrollment in medical will begin July 1, 2014~~)).

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both. Employees must provide evidence of the event that created the special open enrollment. Any one of the following events 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 an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee or an employee's dependent has a change in employment status that affects the employee's or employee's dependent's eligibility for their employer contribution toward employer-based group ((~~health coverage~~)) medical insurance;

(d) Employee or an employee's dependent has a change in enrollment under another ((~~employer~~)) employer-based group medical insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

To waive or enroll during a special open enrollment, the employee must submit the required forms to his or her employing agency. The forms must be received by the employing agency no later than sixty days after the event that creates the special open enrollment.

Medical will be waived the end of the month following the later of the event date or the date the form is received. If the later day is the first of the month, medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, medical will be waived the first of the month in which the event occurs.

Enrollment in medical will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment in medical will begin the first of the month in which the event occurs.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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~~)) employees maintain((~~s~~)) eligibility for the employer contribution toward insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, ((~~an~~)) employees who ((~~has~~)) have established eligibility for benefits under WAC 182-12-114 ((~~is~~)) are eligible for the employer contribution each month in which ((~~he or she is~~)) they are in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) ((~~A~~)) Benefits-eligible seasonal employees (eligible under WAC 182-12-114(2)) who work((~~s~~)) a season of less than nine months ((~~is~~)) are eligible for the employer contribution in any month of ((~~his or her~~)) the season in which ((~~he or she is~~)) they are in pay status eight or more hours during that month. The employer contribution toward insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) ((~~A~~)) Benefits-eligible seasonal employees (eligible under WAC 182-12-114(2)) who work((~~s~~)) a season of nine months or more ((~~is~~)) are eligible for the employer contribution:

(i) In any month of ((~~his or her~~)) the season in which ((~~he or she is~~)) they are in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked.

(3) **Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work 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~~)) employees work((~~s~~)) half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment. If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to insurance coverage. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty who lose eligibility for the employer contribution: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) **Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.**

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

(5) **Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff** maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

(6) **Employees who are in pay status less than eight hours in a month.** Unless otherwise indicated in this section, when there is a month in which ((~~an employee is~~)) employees are not in pay status for at least eight hours, ((~~the~~)) employees:

(a) Lose((~~s~~)) eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) **The employer contribution toward insurance coverage ends** in any one of these circumstances for all employees:

(a) When ((~~the~~)) employees fail((~~s~~)) 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~~)) employees move((~~s~~)) 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,~~)) benefits cease for employees and their enrolled dependents the last day of the month in which ((~~the employee is~~))

employees are eligible for the employer contribution under this section.

Exception: If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(8) **Options for continuation coverage by self-paying.** During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the health care authority (HCA). These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-12-136 May ((~~an~~)) employees on approved educational leave waive continuation coverage? In order to avoid duplication of group health plan coverage, the following shall apply to employees during any period of approved educational leave. Employees eligible for continuation coverage provided in WAC 182-12-133 who obtain ((~~comprehensive health plan coverage under another group plan~~)) other employer-based group medical or dental insurance, or both, may waive ((~~continuance~~)) continuation of such coverage for each full calendar month in which they maintain coverage under the other ((~~comprehensive group health plan~~)) insurance. These employees have the right to reenroll in a public employees benefits board (PEBB) health plan effective the first day of the month after the date the other ((~~comprehensive group health plan coverage~~)) employer-based group medical or dental insurance ends, provided evidence of such other ((~~comprehensive group health plan~~)) coverage is provided to the PEBB program upon application for reenrollment.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-171 When are retiring employees eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) **Procedural requirements.** Retiring employees must meet these procedural requirements to enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage, as well as have substantive eligibility under subsection (2) or (3) of this section((~~.~~)):

(a) The ((~~employee must submit the appropriate forms~~)) employee's form to enroll or defer enrollment in retiree insurance coverage ((~~within~~)) must be received by the PEBB program no later than 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~~)) employer paid or COBRA coverage.

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 ((~~as identified~~)) and maintained continuous enrollment in other coverage as described in WAC 182-12-200 or 182-12-205 ((~~and maintained comprehensive employer-sponsored medical as defined in WAC 182-12-109~~)).

(b) ((~~The~~)) Employees 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 coverage, 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 coverage. The enrollee may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(2) **Substantive eligibility requirements.** Eligible employees (as 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~~)) described in subsection (4) of this section) are eligible to continue insurance coverage as a retiree if they meet procedural and substantive eligibility requirements. To be eligible to continue 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 PEBB retiree insurance coverage election procedural requirements as described in subsection (1) of this section.

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 to enroll in retiree insurance coverage;

• 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 coverage. These employees may continue ((~~PEBB~~)) health plan ((~~enrollment~~)) coverage 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 coverage. These employees may continue ((~~PEBB~~)) health plan ((~~enrollment~~)) coverage 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 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 as a retiree when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. 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~~)). They do not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapters 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) **Substantive eligibility for 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 requirements 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~~)) retirees who ((~~is~~)) are enrolled as a dependent in a ((~~PEBB health plan or~~)) public employees benefits board (PEBB), a Washington state ((~~K-12~~)) school district, or Washington state educational service district sponsored health plan defer enrollment ((~~in a PEBB retiree health plan~~)) under PEBB retiree insurance coverage? The following provisions apply when retirees defer enrollment under public employees benefits board (PEBB) retiree insurance coverage when enrolled as a dependent in a PEBB, Washington state school district, or Washington state education service district sponsored health plan:

(1) Retirees who are enrolled in a PEBB ((~~or~~)), Washington state ((~~K-12~~)) school district, or Washington state educational service district sponsored medical plan as a dependent may defer enrollment in a PEBB ((~~retiree~~)) health plan. Retirees who defer enrollment in medical cannot remain enrolled in dental.

(2) Retirees who defer may later enroll themselves and their dependents in ((~~PEBB retiree~~)) medical, or medical and dental, if they provide evidence of continuous enrollment in a PEBB ((~~or K-12~~)), Washington state school district, or Washington state educational service district sponsored medical plan. Continuous enrollment must be from the date the retiree deferred enrollment in PEBB retiree insurance coverage. Retirees may enroll:

(((~~(1)~~))) (a) During ((~~any~~)) the PEBB annual open enrollment period. (((~~Enrollment in~~)) The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan ((~~will~~)) coverage begins January 1st ((~~after the annual open enrollment period.~~))) of the following year; or

(((~~(2) No later than sixty days after~~)) (b) When enrollment in the PEBB ((~~or K-12~~)), Washington state school district, or

Washington state educational service district sponsored medical plan ends((. (Enrollment in the)) or such coverage under COBRA ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan ((will)) coverage begins the first day of the month after the PEBB ((or K-12)), Washington state school district, or Washington state educational service district ((health)) sponsored medical plan ends.((.))

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-205 May ((a)) retirees defer enrollment ((in a)) under public employees benefits board (PEBB) ((health plan)) retiree insurance coverage at or after retirement? ((Except as stated in subsection (1)(c) of this section, if a)) The following provisions apply when retirees defer enrollment under public employees benefits board (PEBB) retiree insurance coverage when enrolled in other coverage:

(1) Retirees who defer((s)) enrollment in a ((public employees benefits board ())PEBB((.)) health plan((, they)) also defer enrollment for all eligible dependents, except as stated in subsection (2)(c) of this section.

(((1))) (2) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other ((coverage)) medical as described in this subsection((:)). Retirees who defer enrollment in medical automatically defer enrollment in dental. Retirees must enroll in medical to enroll in dental.

(a) Beginning January 1, 2001, retirees may defer enrollment in a PEBB health plan if they are enrolled in ((comprehensive employer-sponsored medical)) employer-based group medical insurance as an employee or the dependent of an employee, or such medical insurance continued under COBRA.

(b) Beginning January 1, 2001, retirees may defer enrollment in a PEBB health plan if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment in a PEBB health plan if they are enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as described in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, retirees who are not eligible for Parts A and B of medicare may defer enrollment in a PEBB health plan if they are enrolled in exchange coverage.

(((2))) (3) To defer PEBB health plan enrollment, ((the retiree)) retiring employees or enrolled subscribers must submit the 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))) (a) If retiring employees submit the required forms to defer enrollment in a PEBB health plan after their employer paid or COBRA coverage ends as described in WAC 182-12-171 (1)(a), enrollment will be deferred the first of the month following the date their employer paid or COBRA coverage ends. The forms must be received by the PEBB program no later than sixty days after the employer paid or COBRA coverage ends.

(b) If enrolled subscribers submit the required forms to defer enrollment in a PEBB health plan, enrollment will be deferred effective the first of the month following the date their deferral form is received by the PEBB program.

(4) Retirees who defer may later enroll themselves and their dependents in a PEBB ((retiree medical, or medical and dental,)) health plan as follows:

(a) Retirees who defer enrollment while enrolled in ((comprehensive employer-sponsored medical)) employer-based group medical insurance, or such medical insurance continued under COBRA may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in ((comprehensive employer-sponsored medical)) such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ((No later than sixty days after)) When their ((comprehensive employer-sponsored)) employer-based group medical insurance or such coverage under COBRA ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after the ((comprehensive employer-sponsored)) employer-based group medical insurance or COBRA ends.

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in ((a federal retiree medical plan)) such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ((No later than sixty days after)) When the federal retiree medical coverage ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as described in this chapter may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in creditable coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ((~~No later than sixty days after~~)) When their medicaid coverage ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required enrollment form must be received by the PEBB program no later than the last day of the calendar year when the retiree's medicaid coverage ends.

(d) Retirees who defer enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in ((~~exchange~~)) such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ((~~No later than sixty days after~~)) When exchange coverage ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

(e) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the authority has determined it is more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-208 What are the requirements regarding enrollment in ((~~retiree~~)) dental under public employees benefits board (PEBB) retiree insurance coverage? (((~~1~~))) The following provisions apply to a subscriber and his or her dependents enrolled under public employees benefits board (PEBB) retiree insurance coverage:

(1) A subscriber and his or her dependents enrolling in dental must meet procedural requirements (as described in WAC 182-12-171(1) and 182-12-262) and eligibility requirements (as described in WAC 182-12-171(2) and 182-12-260).

(2) A subscriber ((~~or dependent enrolled in retiree insurance coverage, may not~~)) and his or her dependents must be enrolled in medical to enroll in dental ((~~unless he or she is also enrolled in medical~~)).

(((~~2~~))) (3) A subscriber enrolling in dental must stay enrolled ((~~in dental~~)) for at least two years before dental can be dropped unless he or she defers coverage as described in WAC 182-12-200 or 182-12-205, or drops dental as described in subsection (4) of this section.

(4) A subscriber enrolled in PEBB dental who becomes eligible for, and enrolls in, employer-based group dental insurance as an employee or the dependent of an employee, or such coverage continued under COBRA, may drop PEBB dental before completing the two-year enrollment requirement. The subscriber and enrolled dependents will be removed from PEBB dental the last day of the month following the date the required enrollment form is received by the PEBB program. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(a) A subscriber may enroll in PEBB dental during the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB dental begins January 1st of the following year.

(b) A subscriber may enroll in PEBB dental after his or her employer-based group dental insurance or such coverage under COBRA ends. The required enrollment form must be received by the PEBB program no later than sixty days after such coverage ends. PEBB dental begins the first day of the month after the employer-based group dental insurance or coverage under COBRA ends.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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 required forms to the PEBB program. Forms must be received by 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 13-22-019, filed 10/28/13, effective 1/1/14)

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~~)) May an employee who is determined to be retroactively eligible for disability retirement 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 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~~)) An employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee submits the required form and a copy of the formal determination letter he or she received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's enrollment form and a copy of his or her formal determination letter are received by the PEBB program no later than sixty days after the date on the determination letter; and

(c) The employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan ((~~payment~~)) benefit under his or her higher education retirement plan (HERP), with exceptions described in WAC 182-12-171(2).

(2) ((~~All~~)) Premiums are due from the effective date of enrollment in PEBB retiree insurance coverage. The employee, at his or her option, must indicate the effective date of PEBB retiree insurance coverage on the enrollment form. The employee may choose from the following dates:

(a) The employee's retirement ((~~eligibility~~)) date as stated in the ((~~written notice~~)) formal determination letter; or ((~~the date of the 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~~))

(b) The first day of the month following the date the formal determination letter was written.

(3) The director may make an exception to the date PEBB retiree insurance coverage ((~~commences or payment of premiums~~)) begins; however, such request((~~s~~)) must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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)~~)) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26.101.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on his or her behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in ((~~a PEBB health plan~~)) retiree insurance coverage as described in subsection (7) of this section. The forms must be received by the PEBB program no later than one hundred eighty days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in ((~~a PEBB health plan~~)) retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB program receives the required forms.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for ((~~PEBB~~)) retiree insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled ((~~in dental~~)) for at least two years before dental can be dropped, unless they defer coverage as described in WAC 182-12-205, or drop dental as described in WAC 182-12-208(4).

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in other coverage as described in WAC 182-12-205((~~(1)~~)) (2).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(4) when they lose ((~~comprehensive employer-sponsored medical~~)) other coverage. Survivors ((~~will need to~~)) must 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~~)) other such coverage when enrolling in a PEBB health plan. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in ((~~a PEBB health plan~~)) retiree insurance coverage 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 other coverage during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

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, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date his or her dependent is no longer eligible under this section. See WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from coverage.

The following are eligible as dependents:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) Registered domestic partner((~~,~~)) is defined to include the following:

(a) Effective January 1, 2010, a state registered domestic partner, as defined in RCW 26.60.020(1)((~~,~~));

(b) A domestic partner who was qualified under PEBB eligibility criteria as a domestic partner before January 1, 2010, and was continuously enrolled under the subscriber in a PEBB health plan or life insurance((~~,~~)); and

(c) Former ((~~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:

(a) Children as defined in RCW 26.26.101 establishment of parent-child relationship;

(b) Biological children, where parental rights have not been terminated;

(c) Stepchildren. The stepchild's relationship to a subscriber (and eligibility as a PEBB dependent) ends, for purposes of this rule, on the same date the subscriber's legal relationship with the spouse or registered domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Legally adopted children;

(e) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(f) Children of the subscriber's ((~~state~~)) registered domestic partner;

(g) Children specified in a court order or divorce decree;

(h) Extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's ((~~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; 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~~)) subscriber for support and maintenance provided such condition occurs before the age twenty-six:

(i) The subscriber must provide evidence of the disability and evidence that the condition occurred before age twenty-six;

(ii) The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date that a child age twenty-six or older no longer qualifies under this subsection;

(iii) A child with a developmental disability or physical handicap who becomes self-supporting is not eligible under this subsection as of the last day of the month in which he or she becomes capable of self-support;

(iv) A child with a developmental disability or physical handicap age twenty-six and older who becomes capable of self-support does not regain eligibility under (i) of this subsection if he or she later becomes incapable of self-support;

(v) The PEBB program will periodically certify the eligibility of a dependent child with a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in ((~~health plan coverage~~)) public employees benefits board (PEBB) benefits.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 ((~~(1)~~)) (2)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) ((~~insurance coverage~~)) benefits. 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.

((~~(d) **During the premium surcharge implementation period.** Subscribers may enroll dependents during the premium surcharge implementation period from April 1 through May 15, 2014. Employees must submit the required enrollment forms to their employing agency and all other subscribers submit the required forms to the PEBB program no later than May 15, 2014. PEBB health plan coverage will begin July 1, 2014.~~))

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent** meets the eligibility criteria in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency when a dependent is no longer eligible. All other subscribers must notify the PEBB program when a dependent is no longer eligible. Consequences for not submitting notice within sixty days of ((~~any~~)) the last day of the month the dependent ((~~ceasing to be eligible~~)) loses eligibility for health plan coverage may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section((~~; or~~

~~(iii) During the premium surcharge implementation period. Subscribers may remove dependents during the premium surcharge implementation period from April 1 through May 15, 2014. To remove a dependent the employee must submit the required form no later than May 15, 2014. The dependent will be removed June 30, 2014~~)).

(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 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 insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for their employer contribution toward employer-based group health ((~~coverage~~)) insurance;

(d) Subscriber or a subscriber's dependent has a change in enrollment under another ((~~employer~~)) employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

(4) **Enrollment requirements. Subscribers must submit the required enrollment forms within the time frames described in this subsection.** Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll his or her eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the PEBB annual open enrollment period, the ((~~subscriber must submit the~~)) required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the ((~~subscriber must submit the~~)) required enrollment forms must be received no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, ((~~the subscriber must submit~~)) the required enrollment form must be received no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the ((~~subscriber must submit the~~)) required form(s) must be received no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, ((~~the subscriber must submit the~~)) required forms must be received no later than sixty days after the event that creates the special open enrollment.

((~~(g) If a subscriber wants to enroll eligible dependents during the premium surcharge implementation period from~~

~~April 1 through May 15, 2014, the subscriber must submit required forms no later than May 15, 2014.~~))

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-263 National Medical Support Notice (NMSN) or court order. When a National Medical Support Notice (NMSN) or court order requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(1) The subscriber may enroll his or her dependent child and request changes to his or her health plan coverage as described under subsection (3) of this section. Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the public employees benefits board (PEBB) program.

(2) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN or court order, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to subsection (3) of this section upon request of:

(a) The child's other parent; or

(b) Child support enforcement program.

(3) Changes to health plan coverage or enrollment are allowed as directed by the NMSN or court order:

(a) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN or court order;

(b) An employee who has waived 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~~)) Changes to health plan coverage or enrollment described in subsection (3)(a) through (c) of this section will begin the first day of the month following receipt of the NMSN or court order. If the NMSN or court order ((~~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~~)) is received on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in subsection (3)(d) of this section the last day of the month the NMSN or court order is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

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 forms to enroll or defer enrollment in ((~~a PEBB medical plan~~)) retiree insurance coverage. The forms must be received by the PEBB program no later than sixty days after the date of the employee's or retiree's death.

(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 coverage.

(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 coverage. The dependent must submit the appropriate form(s) to enroll or defer PEBB health plan enrollment. The forms must be received by the PEBB program no later than sixty days after the retiree's death. 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 form to enroll or defer enrollment in ((~~a PEBB medical plan~~)) PEBB retiree insurance coverage. The form must be received by the PEBB program no later than sixty days after the date of the employee's death.

(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 PEBB 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 WAC 182-12-200 and 182-12-205.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria in WAC 182-12-260? If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the full premiums set by the health care authority (HCA), with no contribution from the employer, following their loss of eligibility under the subscriber's health plan coverage. The public employees benefits board (PEBB) program must receive the appropriate forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, ((~~state~~)) registered domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment under provisions of WAC 182-12-250 or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria in WAC 182-12-260 are eligible to continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-12-146 for more information on COBRA.

Exception: A dependent who loses eligibility because a domestic partnership or same-sex marriage is dissolved may continue health plan enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No PEBB continuation coverage will be offered unless the PEBB program is notified through hand-delivery or United States Postal Service mail of the qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-010 ((~~Adoption of model rules of procedure.~~)) Appeals—Purpose and scope. (1) For WAC 182-16-025 through 182-16-040, the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the authority in public employees benefits board (PEBB) benefits related proceedings. ((~~Those~~)) The model rules of procedure may be found in chapter 10-08 WAC. Other procedural rules adopted in ((~~this title~~)) chapters 182-08, 182-12, and 182-16 WAC are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in ((~~this title~~)) WAC 182-16-025 through 182-16-040, the procedural rules adopted ((~~in this title~~)) shall govern.

(2) WAC 182-16-050 through 182-16-110 describes the general rules and procedures that apply to an administrative hearing, requested under WAC 182-16-050, of a PEBB appeal committee decision.

(a) WAC 182-16-050 through 182-16-110 supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules of procedure in chapter 10-08 WAC. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended are adopted for use in a hearing. In the case of a conflict between the model rules of procedure and the rules adopted in WAC 182-16-050 through 182-16-110, the rules adopted in WAC 182-16-050 through 182-16-110 shall prevail.

(b) If there is a conflict between WAC 182-16-050 through 182-16-110 and specific PEBB program rules, the specific PEBB program rules prevail. PEBB program rules are found in chapters 182-08, 182-12, and 182-16 WAC.

(c) Nothing in WAC 182-16-050 through 182-16-110 is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(d) The hearing rules for the PEBB program in WAC 182-16-050 through 182-16-110 do not apply to any other health care authority program.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Authority" or "HCA" means the health care authority.

"Business days" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of a hearing.

"Denial" or "denial notice" means an action by, or communication from, either an employing agency, or the PEBB program that aggrieves an employee, or his or her dependent, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax

dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, charter schools, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Final order" means an order that is the final PEBB program decision.

"Health plan" ((~~or "plan"~~)) means a plan offering medical ((~~coverage~~)) or dental ((~~coverage~~)), or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing" means a proceeding before a presiding officer that gives a party an opportunity to be heard in a dispute about a decision made by the PEBB appeals committee, including prehearing conferences, dispositive motion hearings, and evidentiary hearings.

"Hearing representative" means a person who is authorized to represent the PEBB program in an administrative hearing. The person may be an assistant attorney general, a licensed attorney, or authorized HCA employee.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB 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.

"Prehearing conference" means a proceeding scheduled and conducted by a presiding officer to address issues in preparation for a hearing.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

• Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and

• The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Presiding officer" means an impartial decision maker who is an attorney, presides at an administrative hearing, and is either a director designated HCA employee or an administrative law judge employed by the office of administrative hearings.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars,

cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-16-025 Where do members appeal decisions regarding eligibility, enrollment, premium payments, premium surcharges, a public employees benefits board (PEBB) wellness incentive, or the administration of benefits? (1) Any employee of a state agency or his or her dependent aggrieved by a decision made by the employing state agency with regard to public employees benefits board (PEBB) eligibility, enrollment, or premium surcharge may appeal that decision to the employing state agency by the process outlined in WAC 182-16-030.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to insurance coverage, as described in public employees benefits board (PEBB) rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any employee of an employer group or his or her dependent who is aggrieved by a decision made by an employer group with regard to PEBB eligibility, enrollment, or premium surcharge((~~, or a PEBB wellness incentive,~~)) may appeal that decision to the employer group through the process established by the employer group.

Exception: ((~~Appeals by an~~)) Any employee of an employer group ((~~or his or her dependent based on eligibility or enrollment~~)) aggrieved by a decision((~~s~~)) regarding life insurance ((~~or~~)), LTD insurance ((~~must be made~~)), eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(3) Any subscriber or dependent aggrieved by a decision made by the PEBB program with regard to ((~~public employee benefits~~)) PEBB eligibility, enrollment, premium payments, premium surcharge, ((~~or~~)) eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive, may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(4) Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, self-insured dental plan, insured dental plan, life insurance or LTD insurance may appeal that decision by following the appeal provisions of those plans, with the exception of eligibility, enrollment, and premium payment determinations.

(5) Any PEBB enrollee aggrieved by a decision regarding the administration of PEBB long-term care insurance or property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(6) Any PEBB ((~~enrollee~~)) employee aggrieved by a decision regarding the ((~~medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered~~)) administration of a benefit offered under the state's salary reduction plan may appeal that decision by the process described in WAC 182-16-036.

(7) Any subscriber aggrieved by a decision made by the third-party administrator contracted to administer the PEBB wellness incentive program regarding the completion of the PEBB wellness incentive program requirements, or a request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision by the process described in WAC 182-16-035.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-16-030 How can an employee or an employee's dependent appeal a decision made by a state agency about eligibility, premium surcharge, or enrollment in benefits? (1) An eligibility, premium surcharge, or enrollment decision made by an employing state agency may be appealed by submitting a written request for review to the employing state agency. The employing state agency must receive the request for review ((~~within~~)) no later than thirty days ((~~of~~)) after the date of the initial denial notice. The contents of the request for review are to be provided in accordance with WAC 182-16-040.

(a) Upon receiving the request for review, the employing state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The employing state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.

(c) A copy of the employing state agency's written decision shall be sent to the employing state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The employing state agency's written decision shall become the employing state agency's final decision effective fifteen days after the date it is rendered.

(d) The employing state agency may reverse eligibility, premium surcharge, or enrollment decisions based only on circumstances that arose due to delays caused by the employing state agency or error(s) made by the employing state agency.

(2) Any employee or employee's dependent who disagrees with the employing state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal ((~~within~~)) no later than thirty days ((~~of~~)) after the date of the employing state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ((~~cause~~)) reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-16-032 How can a decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, premium payments, premium surcharge, ((~~or~~)) eligibility to participate in the PEBB wellness incentive program or receive a PEBB wellness incentive; or a decision made by an employer group regarding life insurance or LTD insurance be appealed? (1) ((~~An~~)) A decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, premium payment, premium surcharge, or eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive ((~~decision made by the public employees benefits board (PEBB) program~~)), may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(2) ((~~An eligibility or enrollment~~)) A decision made by an employer group regarding life insurance ((~~or~~)), LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(3) The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(4) The notice of appeal from an employee or employee's dependent must be received by the PEBB appeals manager ((~~within~~)) no later than thirty days ((~~of~~)) after the date of the denial notice.

(5) The notice of appeal from a retiree, self-pay enrollee, or dependent of a retiree or self-pay enrollee must be received by the PEBB appeals manager ((~~within~~)) no later than sixty days ((~~of~~)) after the date of the denial notice.

(6) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(7) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ((~~cause~~)) reason explaining the cause for the delay.

(8) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-035 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements? (1) Any subscriber aggrieved by a decision regarding the completion of the wellness incentive program requirements or request for a reasonable alternative to a wellness incentive program requirement may appeal that decision to the third-party administrator contracted to administer the PEBB wellness incentive program.

(2) Any subscriber who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the wellness incentive program may appeal to the public employees benefits board (PEBB) appeals committee.

(a) The notice of appeal from an employee must be received by the PEBB appeals manager no later than thirty days after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(b) The notice of appeal from a retiree or self-pay enrollee must be received by the PEBB appeals manager no later than sixty days after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(3) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(4) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(5) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-036 How can an ((~~enrollee~~)) employee appeal a decision regarding the administration of benefits offered under the state's salary reduction plan? (1) Any ((~~enrollee~~)) employee who disagrees with a decision that denies enrollment in a benefit offered under the state's salary reduction plan may appeal that decision to the public employees benefits board (PEBB) appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the denial notice by the PEBB program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(2) Any employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) and dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision to the third-party administrator contracted to administer the plan by following the appeal process of the third-party administrator.

((~~(2)~~)) Any ((~~enrollee~~)) employee who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the ((~~public employees benefits board (~~))PEBB((~~)~~)) appeals committee. The PEBB appeals manager must receive the notice of appeal ((~~within~~)) no later than thirty days ((~~of~~)) after the date of the appeal decision by the third-party administrator that administers the medical FSA and DCAP ((~~offered under the state's salary reduction plan~~)). The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ((~~cause~~)) reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any ((~~enrollee~~)) employee aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal ((~~within~~)) no later than thirty days ((~~of~~)) after the date of the denial notice by the PEBB program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ((~~cause~~)) reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-038 How can an entity or organization appeal a decision of the health care authority to deny an employer group application? An entity or organization whose employer group application is denied by the authority may appeal the decision to the public employees benefits board (PEBB) appeals committee. For rules regarding eligible entities, see WAC 182-12-111. The PEBB appeals manager must receive the notice of appeal ((~~within~~)) no later than thirty days ((~~of~~)) after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appealing party in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision to the appellant on the notice of appeal within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ((~~cause~~)) reason explaining the cause for the delay.

(3) Any appealing party aggrieved with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-050 How can an enrollee or entity request ((~~a~~)) an administrative hearing if aggrieved by a decision made by the public employees benefits board (PEBB) appeals committee? (1) Any party aggrieved by a decision of the public employees benefits board (PEBB) appeals committee, may request an administrative hearing.

(2) The request must be made in writing to the PEBB appeals manager. The PEBB appeals manager must receive the request for an administrative hearing ((~~within~~)) no later than thirty days of the date ((~~of~~)) after the written decision by the PEBB appeals committee.

(3) ((~~The authority shall set the time and place of the hearing and give not less than twenty days notice to all parties.~~

~~(4)~~)) The director, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this ((~~chapter~~)) section.

((~~(5)~~)) (4) All hearings must be conducted in compliance with ((~~these rules~~)) WAC 182-16-050 through 182-16-110, chapter 34.05 RCW, and chapter 10-08 WAC ((~~as applicable.~~

~~(6) Within ninety days after the hearing record is closed, the director or his or her designee shall render a decision which shall be the final decision of the authority. A copy of that decision shall be mailed to all parties~~)), as described in WAC 182-16-010(2).

NEW SECTION

WAC 182-16-052 Requirements to appear and represent a party in the administrative hearing process. (1)

All parties must provide the presiding officer and all other parties with their name, address, and telephone number.

(2) If the party who requested a hearing is represented by a party who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the nonattorney representative must provide the hearing representative with a signed, written consent permitting release to the nonattorney representative of personal health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state, who wishes to represent the party who requested a hearing, must file a written notice of appearance containing the attorney's name, address, and telephone number. The attorney must file a written notice of withdrawal of representation.

NEW SECTION

WAC 182-16-055 Mailing address changes. (1) The party who requested the hearing must tell the hearing representative and the presiding officer as soon as possible, when the party's mailing address changes.

(2) If that party does not notify the hearing representative and the presiding officer of a change in the party's mailing address and the presiding officer and hearing representative continue to mail notices and other important documents to the last known mailing address, the documents will be deemed received by the party.

NEW SECTION

WAC 182-16-061 Presiding officers—Assignment, motions of prejudice, and disqualification. (1) **Assignment:** A presiding officer will be assigned at least five business days before a hearing. A party may ask which presiding officer is assigned to a hearing by contacting the presiding officer's office listed on the notice of hearing. If requested by a party, the presiding officer's office must send the name of the assigned presiding officer to all parties, by e-mail or in writing, at least five business days before the scheduled hearing date.

(2) **Motion of prejudice:** Any party requesting a different presiding officer may file a written motion of prejudice against the presiding officer assigned to the matter before the presiding officer rules on a discretionary issue in the case, admits evidence, or takes testimony.

(a) A motion of prejudice must include a declaration stating that a party does not believe the presiding officer can hear the case fairly. Copies of the motion must also be mailed to all parties listed on the notice of hearing.

(b) Any party's first motion of prejudice will be automatically granted. Any subsequent motion of prejudice made by a party may be granted or denied at the discretion of the presiding officer no later than seven days after receiving the motion.

(c) A party may make an oral motion of prejudice at the beginning of a hearing before the presiding officer rules on a discretionary issue in the matter, admits evidence, or takes testimony if:

(i) The presiding officer was not assigned at least five business days before the date of the hearing; or

(ii) The presiding officer was changed within five business days of the date of the hearing.

(3) **Disqualification:** A presiding officer may be disqualified from presiding over a hearing for bias, prejudice, conflict of interest, or ex parte contact with a party to the hearing.

(a) Any party may file a petition to disqualify a presiding officer pursuant to RCW 34.05.425. A petition to disqualify must be in writing and promptly mailed to all parties and the presiding officer upon discovering facts of possible grounds for disqualification.

(b) The presiding officer whose disqualification is requested will determine whether to grant the petition in a written order, stating facts and reasons for the determination. The presiding officer must mail the order no later than seven days after receiving the petition for disqualification.

NEW SECTION

WAC 182-16-062 Authority of the presiding officer. (1) A presiding officer must hear and decide the issues de novo (anew) based on what is presented during a hearing and admitted into the record.

(2) A presiding officer has no inherent or common law powers, and is limited to those powers granted by the state constitution, statutes, or rules.

(3) A presiding officer may not decide that a rule is invalid or unenforceable. If the validity of a rule is raised during a hearing, the presiding officer may allow only argument to preserve the record for judicial review.

NEW SECTION

WAC 182-16-064 Applicable rules and laws. During a hearing, a presiding officer must first apply the applicable public employees benefits board (PEBB) program rules adopted in the Washington Administrative Code (WAC). If no PEBB program rule applies, the presiding officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-16-130, and court decisions.

NEW SECTION

WAC 182-16-066 Burden of proof and presumptions. (1) The burden of proof is a party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer that a position is correct based on the standard of proof.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and agencies are presumed to have properly performed their duties and acted in accordance with the law, unless substantial evidence to the contrary is pre-

sented. A party challenging this presumption bears the burden of proof.

NEW SECTION

WAC 182-16-070 Calculating when a hearing deadline ends. (1) When counting days to calculate when a hearing deadline ends under WAC 182-16-050 through 182-16-110:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and the party has twenty-one calendar days to request a review, start counting the days with Wednesday.

(b) If the last day of the period is a Saturday, Sunday, or legal holiday, the deadline is the next business day.

(2) The deadline is 5:00 p.m. on the last day.

NEW SECTION

WAC 182-16-071 Time requirements for notices mailed by the presiding officer. (1) The presiding officer must mail a notice of a hearing to all parties and their representatives at least fourteen calendar days before the hearing date. The parties may agree to, but the presiding officer cannot impose, a shorter notice period.

(2) If a prehearing conference or dispositive motion hearing is scheduled, the presiding officer must mail a notice of the prehearing conference or dispositive motion hearing to the parties and their representatives at least seven business days before the date of the prehearing conference or dispositive motion hearing except:

(a) The presiding officer may change any scheduled hearing into a prehearing conference or dispositive motion hearing and provide less than seven business days' notice of the prehearing conference or dispositive motion hearing; and

(b) The presiding officer may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether to grant a continuance.

(3) The presiding officer must reschedule a hearing if necessary to comply with the notice requirements in this section.

NEW SECTION

WAC 182-16-072 Hearing location. (1) A presiding officer must be present at all hearings. Hearings may be held either in person or telephonically.

(a) A telephonic hearing is where all parties and the presiding officer are present by telephone.

(b) An in-person hearing is where the party that requested the hearing appears face-to-face with the presiding officer. The other parties can choose to appear either in person or by telephone, but cannot be ordered to appear in person.

(2) Whether a hearing is held in person or telephonically, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(3) If a hearing is originally scheduled to be held in-person, the party that requested the hearing may ask the presiding officer to change the in-person hearing to a telephonic hearing. Once a telephonic hearing begins, the presiding officer may stop, reschedule, and change the telephonic hearing to an in-person hearing if any party makes such a request.

NEW SECTION

WAC 182-16-073 Rescheduling and continuances. (1) Any party may request the presiding officer to reschedule a hearing if a rule requires notice of a hearing and the amount of notice required was not provided.

(a) The presiding officer must reschedule the hearing under circumstances identified in this subsection (1) if requested by any party.

(b) The parties may agree to shorten the amount of notice required by any rule.

(2) Any party may request a continuance of a hearing either orally or in writing.

(a) Before contacting the presiding officer to request a continuance, the party seeking a continuance must contact the other parties, if possible, to find out if they will agree to a continuance.

(b) The party making the request for a continuance must let the presiding officer know whether the other parties agreed to the continuance. If the parties agree to a continuance, the presiding officer must grant the continuance. If the parties do not agree to a continuance, the presiding officer must schedule a prehearing conference in accordance with the requirements of WAC 182-16-071 to decide whether to grant the continuance.

(c) After granting a continuance, the presiding officer must mail a new hearing notice at least fourteen calendar days before the new hearing date unless the parties agree to a shorter time period.

(d) If the presiding officer denies the continuance request after a prehearing conference is held pursuant to (b) of this subsection, the presiding officer must mail a written order setting forth the basis for denying the continuance request and may proceed with the hearing on the originally scheduled hearing date.

NEW SECTION

WAC 182-16-080 Determining if an administrative hearing right exists. (1) A party has a right to a hearing only if a law or program rule gives that right. If the party is not sure whether a hearing right exists, they may request a hearing to protect their rights.

(2) The right to a hearing does not exist unless:

(a) The public employees benefits board (PEBB) appeals committee has issued a written decision under WAC 182-16-030 (2)(b), 182-16-032(7), 182-16-035(4), 182-16-036 (1)(b), (3)(b), (4)(b), or 182-16-038(2); and

(b) A hearing of the PEBB appeals committee's written decision has been timely requested pursuant to WAC 182-16-050.

(3) If the hearing representative or the presiding officer questions the right to a hearing, the presiding officer must decide whether a hearing right exists, in a written ruling, prior to reviewing and ruling on any other issues.

(4) If the presiding officer decides a person or entity does not have a right to a hearing, the matter must be dismissed.

NEW SECTION

WAC 182-16-081 Prehearing conferences. (1) A prehearing conference is a formal proceeding conducted on the record by a presiding officer to prepare for a hearing.

(a) The presiding officer must record a prehearing conference using audio recording equipment.

(b) The presiding officer may conduct a prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties.

(2) Any party can request a prehearing conference. The presiding officer must grant each party's first request for a prehearing conference if it is filed with the presiding officer at least seven business days before the next scheduled hearing date. The presiding officer may grant requests for additional prehearing conferences.

(3) The party requesting the hearing must attend or participate in any scheduled prehearing conference. If the party requesting the hearing does not attend or participate in a scheduled prehearing conference, the presiding officer will enter an order of default dismissing the matter.

(4) During a prehearing conference the parties and the presiding officer may:

(a) Identify the issue(s) to be decided;

(b) Agree to the date, time, and place of any requested or necessary hearing(s);

(c) Identify accommodation and safety issues; or

(d) Set a deadline to exchange a proposed witness list and proposed exhibits before the hearing.

(5) After the prehearing conference ends, the presiding officer must enter a written order that recites the action taken at the prehearing conference, a case schedule outlining hearing dates and deadlines for exchanging witness lists and exhibits, and any other agreements reached by the parties.

(6) The presiding officer must mail the prehearing order to the parties at least fourteen calendar days before the next scheduled hearing.

(7) A party may object to the prehearing order by notifying the presiding officer in writing no later than ten days after the mailing date of the order. The presiding officer must mail a written ruling on the objection.

(8) If no objection is made to the prehearing order, the order determines how the case will be conducted by the presiding officer, including whether a hearing will be in person or held by telephone conference, unless the presiding officer enters an amended prehearing conference order.

NEW SECTION

WAC 182-16-082 Dispositive motions. (1) A dispositive motion is a written motion that could dispose of one or all the issues in an administrative hearing request, such as a motion to dismiss or motion for summary judgment. The presiding officer may only consider written dispositive motions filed with the presiding officer.

(2) Any party may request a dispositive motion hearing by filing a written dispositive motion with the presiding officer and mailing a copy of the motion to all other parties. The presiding officer may also set a dispositive motion hearing, and request briefing from the parties, to address any possible dispositive issues the presiding officer believes must be addressed before the hearing.

(3) The deadline to mail a timely dispositive motion shall be ten calendar days before the scheduled hearing.

(4) Upon receiving a dispositive motion, a presiding officer:

(a) Must convert the scheduled hearing to a dispositive motion hearing when:

(i) The dispositive motion is timely filed with the presiding officer at least ten calendar days before the date of the hearing; and

(ii) The party filing the dispositive motion has not previously filed a dispositive motion.

(b) May schedule a dispositive motion hearing in all instances other than described in (a) of this subsection.

(5) The presiding officer may conduct the dispositive motion hearing in person or by telephone conference. For dispositive motion hearings scheduled to be held in person, the hearing representative may choose to attend and participate in person or by telephone conference call.

(6) The party requesting the dispositive motion hearing must attend and participate in the dispositive motion hearing. If the party requesting the hearing does not attend and participate in the dispositive motion hearing, the presiding officer will enter an order of default.

(7) During a dispositive motion hearing, the presiding officer can only consider the filed dispositive motion(s), any response to that motion(s), and argument on the motion(s). Prior to rescheduling any necessary hearings, the presiding officer must mail a written order on the dispositive motion(s).

(8) The presiding officer must mail the written order on the dispositive motion(s) to all parties no later than eighteen calendar days after the dispositive motion hearing is held. Orders on dispositive motions are subject to motions for reconsideration or petitions for judicial review pursuant to WAC 182-16-105 and 182-16-110.

NEW SECTION

WAC 182-16-090 Orders of dismissal—Reinstating a hearing after an order of dismissal. (1) An order of dismissal is an order from the presiding officer ending the matter. The order is entered because the party who requested the hearing withdrew the administrative hearing request, the appellant is no longer aggrieved, the presiding officer granted a dispositive motion dismissing the matter, or the presiding officer entered an order of default because the party who requested a hearing failed to attend or refused to participate in the hearing.

(2) The order of dismissal becomes a final order if no party files a request to vacate the order pursuant to subsections (3) through (7) of this section.

(3) If the presiding officer enters and mails an order dismissing the hearing, the party that originally requested the hearing may file a written request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, the presiding officer must schedule and mail notice of a prehearing conference in accordance with WAC 182-16-071. At the prehearing conference, the party asking that the order of dismissal be vacated has the burden to

show good cause according to subsection (8) of this section for an order of dismissal to be vacated and the matter to be reinstated.

(4) The request to vacate an order of dismissal must be filed with the presiding officer and the other parties. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated.

(5) The request to vacate an order of dismissal must be filed with the presiding officer no later than twenty-one calendar days after the date the order of dismissal was entered. If no request is received within that deadline, the dismissal order becomes a final order and the public employees benefits board (PEBB) appeals committee decision will stand.

(6) If the presiding officer finds good cause, as described in subsection (8) of this section, for the order of dismissal to be vacated, the presiding officer must enter and mail a written order to the parties setting forth the findings of fact, conclusions of law, and reinstatement of the matter.

(7) If the order of dismissal is vacated, the presiding officer will conduct a hearing at which the parties may present argument and evidence about issues raised in the original request for hearing. The hearing may occur immediately following the prehearing conference on the request to vacate only if agreed to by the parties and the presiding officer, otherwise a hearing date must be scheduled by the presiding officer.

(8) Good cause is a substantial reason or legal justification for failing to appear, act, or respond to an action using the provisions of Superior Court Civil Rule 60 as a guideline. This good cause exception applies only to this section. This good cause exception does not apply to any other chapter(s) or section(s) in Title 182 WAC.

NEW SECTION

WAC 182-16-091 Settlement agreements. (1) If the parties reach a mutually agreeable solution the agreement must be in writing.

(2) Any written agreements will be entered into the record by either party for consideration by the presiding officer.

(3) If all of the issues are resolved by the written agreement, the presiding officer will enter and mail an order of dismissal.

(4) If all of the issues are not resolved by a written agreement, either party, or the presiding officer, may request a prehearing conference before a hearing on any remaining issues can occur.

NEW SECTION

WAC 182-16-092 Withdrawing the request for an administrative hearing. (1) The party who requested an administrative hearing of a public employees benefits board (PEBB) appeals committee decision may withdraw the administrative hearing request for any reason, and at any time, by contacting the hearing representative who will coordinate the withdrawal with the presiding officer.

(2) The request for withdrawal must generally be made in writing. An oral withdrawal by the appellant is permitted during a hearing when both the presiding officer and hearing representative are present.

(3) After a withdrawal request is received, the presiding officer must cancel any scheduled hearings and enter and mail a written order dismissing the case. If a hearing request is withdrawn, the party will not be able to request another administrative hearing on the same PEBB appeals committee decision.

(4) If a party withdraws an administrative hearing request, the order of dismissal may only be vacated (set aside) according to WAC 182-16-090.

NEW SECTION

WAC 182-16-100 Final order deadline—Required information. (1) Within ninety days after the hearing record is closed, the presiding officer shall mail a final order that shall be the final decision of the authority. The presiding officer shall mail a copy of the final order to all parties.

(2) The presiding officer must include the following information in the written final order:

(a) Identify the order as a final order of the public employees benefits board (PEBB) program;

(b) List the name and docket number of the case and the names of all parties and representatives;

(c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;

(d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;

(e) State the law that applies to the dispute;

(f) Apply the law to the facts of the case in the conclusions of law;

(g) Discuss the reasons for the decision based on the facts and the law;

(h) State the result and remedy ordered; and

(i) Include any other information required by law or program rules.

NEW SECTION

WAC 182-16-105 Motion for reconsideration and response—Process. (1) Reconsideration means asking the presiding officer to reconsider his or her final order because the party believes the presiding officer made a mistake of law, mistake of fact, or clerical error.

(2) A motion for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) The other parties may respond to the motion for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(4) Motions for reconsideration must be filed with the presiding officer who entered the final order.

(5) If a party files a motion for reconsideration:

(a) The presiding officer must receive the motion for reconsideration on or before the tenth business day after the final order was mailed.

(b) The party filing the motion must send copies of the motion to all other parties.

(c) Within five business days of receiving a motion for reconsideration, the presiding officer must mail to all parties a notice that provides the date the motion for reconsideration was received.

(d) Responses to a motion for reconsideration must be received by the presiding officer no later than seven business days after the presiding officer's notice in (c) of this subsection was mailed, or the response will not be considered.

(e) Responses to a motion for reconsideration must be mailed to all parties.

(6) If a party needs more time to file a motion for reconsideration or respond to a motion for reconsideration, the presiding officer may extend the deadline if the party makes a written request by the deadline.

NEW SECTION

WAC 182-16-106 Decisions on motions for reconsideration. (1) Unless the motion for reconsideration is denied as untimely filed under WAC 182-16-105 (5)(a), the same presiding officer who entered the final order, if reasonably available, will also dispose of the motion as well as any responses received.

(2) The decision on the motion for reconsideration must be in the form of a written order denying the motion, or granting the motion and issuing a new written final order.

(3) If the presiding officer does not send an order on the motion for reconsideration within twenty calendar days of the date of the notice described in WAC 182-16-105 (5)(c), the motion is deemed denied.

(4) If any party files a motion for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a petition for reconsideration is not required before requesting judicial review.

(5) An order denying a motion for reconsideration is not subject to judicial review.

NEW SECTION

WAC 182-16-110 Judicial review of final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The party that requested the administrative hearing may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The public employees benefits board (PEBB) program may not request judicial review.

(3) The party should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

NEW SECTION

WAC 182-16-130 Index of significant decisions. (1) A final decision may be relied upon, used, or cited as precedent by a party if the final order has been indexed in the authority's index of significant decisions in accordance with RCW 34.05.473 (1)(b).

(2) The index of significant decisions is available to the public at the health care authority (HCA) internet page. As decisions are indexed they will be linked on this page. For additional information on how to obtain a copy of the index, contact the HCA hearing representative.

(3) A final decision published in the index of significant decisions may be removed from the index when:

(a) A precedential published decision entered by the court of appeals or the supreme court reverses an indexed final decision; or

(b) HCA determines that the indexed final decision is no longer precedential due to changes in statute, rule or policy.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-16-060	Index of significant decisions.

WSR 14-20-059

PERMANENT RULES

PUGET SOUND CLEAN AIR AGENCY

[Filed September 25, 2014, 4:17 p.m., effective November 1, 2014]

Effective Date of Rule: November 1, 2014.

Purpose: To update the specific reference in the agency's incorporation by reference of the state department of ecology's State Environmental Policy Act (SEPA) regulations to the current effective date.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 2.02.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 14-17-135 on August 20, 2014.

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

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

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

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

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

Date Adopted: September 25, 2014.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 2.02 ADOPTION BY REFERENCE

For purposes of this regulation, the Agency adopts by reference the following sections of chapter 197-11 WAC, in effect as of ((~~January 28, 2013~~)) May 10, 2014:

197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.
197-11-250 SEPA/Model Toxics Control Act integration.
197-11-253 SEPA lead agency for MTCA actions.
197-11-256 Preliminary evaluation.
197-11-259 Determination of nonsignificance for MTCA remedial actions.
197-11-262 Determination of significance and EIS for MTCA remedial actions.
197-11-265 Early scoping for MTCA remedial actions.
197-11-268 MTCA interim actions.
197-11-300 Purpose of this part.
197-11-305 Categorical exemptions.
197-11-310 Threshold determination required.
197-11-315 Environmental checklist.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-360 Determination of significance (DS)/initiation of scoping.
197-11-390 Effect of threshold determination.
197-11-400 Purpose of EIS.
197-11-402 General requirements.
197-11-405 EIS types.
197-11-406 EIS timing.
197-11-408 Scoping.
197-11-410 Expanded scoping.
197-11-420 EIS preparation.
197-11-425 Style and size.
197-11-430 Format.
197-11-435 Cover letter or memo.
197-11-440 EIS contents.
197-11-442 Contents of EIS on nonproject proposals.
197-11-443 EIS contents when prior nonproject EIS.
197-11-444 Elements of the environment.
197-11-448 Relationship of EIS to other considerations.
197-11-450 Cost-benefit analysis.
197-11-455 Issuance of DEIS.
197-11-460 Issuance of FEIS.
197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-510 Public notice.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.
197-11-600 When to use existing environmental documents.
197-11-610 Use of NEPA documents.
197-11-620 Supplemental environmental impact statement – Procedures.
197-11-625 Addenda – Procedures.
197-11-630 Adoption – Procedures.
197-11-635 Incorporation by reference – Procedures.
197-11-640 Combining documents.
197-11-650 Purpose of this part.
197-11-655 Implementation.
197-11-660 Substantive authority and mitigation.
197-11-680 Appeals.
197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision maker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.

197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.
197-11-800 Categorical exemptions.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.
197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-916 Application to ongoing actions.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
197-11-938 Lead agencies for specific proposals.
197-11-940 Transfer of lead agency status to a state agency.
197-11-942 Agreements on lead agency status.
197-11-944 Agreements on division of lead agency duties.
197-11-946 DOE resolution of lead agency disputes.
197-11-948 Assumption of lead agency status.
197-11-960 Environmental checklist.
197-11-965 Adoption notice.
197-11-970 Determination of nonsignificance (DNS).
197-11-980 Determination of significance and scoping notice (DS).
197-11-985 Notice of assumption of lead agency status.
197-11-990 Notice of action.

WSR 14-20-060
PERMANENT RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed September 25, 2014, 4:18 p.m., effective November 1, 2014]

Effective Date of Rule: November 1, 2014.

Purpose: To adjust the maximum civil penalty amount for inflation and update the federal regulation reference date.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 14-17-136 on August 20, 2014.

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

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

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

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

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

Date Adopted: September 25, 2014.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed $((~~17,525.00~~)) 17,781.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than $((~~17,525.00~~)) 17,781.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((~~2013~~)) 2014.

WSR 14-20-061
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 25, 2014, 4:18 p.m., effective October 26, 2014]

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

Purpose: These rule revisions retract the rule revisions to WAC 392-121-257 that were implemented earlier this year in error. Therefore, the WAC section will be restored back to its original wording at the beginning of the 2013-14 school year.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-257.

Statutory Authority for Adoption: RCW 28A.150.290(1) and 28A.415.023.

Adopted under notice filed as WSR 14-16-086 on August 4, 2014.

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

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

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

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

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

Date Adopted: September 16, 2014.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 14-07-005, filed 3/6/14, effective 4/6/14)

WAC 392-121-257 Definition—In-service credits. As used in this chapter, "in-service credits" means credits determined as follows:

(1) Credits are earned:

(a) After August 31, 1987; and

(b) After the awarding or conferring of the employee's first bachelor's degree.

(2) Credits are earned on or before October 1 of the year for which allocations are being calculated pursuant to this chapter.

(3) Credits are earned in either:

(a) A locally approved in-service training program which means a program approved by a school district board of directors, and meeting standards adopted by the professional educator standards board pursuant to the standards in WAC 181-85-200 and the development of which has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.-040; or

(b) A state approved continuing education program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the professional educator standards board pursuant to chapter 181-85 WAC((~~: Provided, That continuing education credit for educational staff associates pursuant to WAC 181-85-077 shall not be subject to the requirement in WAC 181-85-030(6) of a minimum of three continuing education credit hours~~)).

(4) Credits are not earned for the purpose of satisfying the requirements of the employee's next highest degree.

(5) Credits earned after September 1, 1995, must satisfy the additional requirements of WAC 392-121-262.

(6) Credits are not counted as academic credits pursuant to WAC 392-121-255 or nondegree credits pursuant to WAC 392-121-259.

(7) Ten locally approved in-service or state approved continuing education credit hours defined in WAC 181-85-030 equal one in-service credit.

(8) Each forty hours of participation in an approved internship with a business, industry, or government agency pursuant to chapter 181-83 WAC equals one in-service credit.

(a) No more than two in-service credits may be earned as a result of an internship during any calendar-year period.

(b) Each individual is limited to a maximum of fifteen in-service credits earned from internships.

(9) Accumulate credits rounded to one decimal place.

WSR 14-20-063
PERMANENT RULES
STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed September 26, 2014, 8:41 a.m., effective October 27, 2014]

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

Purpose: To allow tuition charges based on term length for students enrolled in competency-based degree programs.

Citation of Existing Rules Affected by this Order: Amending WAC 131-28-025.

Statutory Authority for Adoption: RCW 28B.10.400.

Adopted under notice filed as WSR 14-11-069 on May 19, 2014.

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

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

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

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

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

Date Adopted: September 10, 2014.

Beth Gordon
Executive Assistant
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-22-010, filed 10/26/01, effective 11/26/01)

WAC 131-28-025 Method of assessing tuition and fee charges. Tuition and fees charged to students shall conform to chapter 28B.15 RCW, the legislative budget and policies of the state board and the following:

(1) For credit- and credit equivalent-based programs, tuition, and fees charged to students:

(a) Shall be based upon the number of credits assigned to such courses as listed in the official and current catalog of the college, or for courses not given such credit designations, the number of credit equivalents as computed by the method for deriving such equivalents established by the state board.

(((~~(2)~~))) (b) Shall be assessed on a per-credit basis at uniform rates for resident and for nonresident students, respectively. Partial credits shall be assessed on a proportionate basis. The respective maximums charged to any resident or nonresident student shall not exceed the amount allowed by law.

(((~~(3)~~))) (c) Shall be assessed for part-time students, for each credit of registration or its equivalent.

(((~~(4)~~))) (d) Shall include an additional operating fee for each credit in excess of eighteen at the tuition fee rate charged to part-time students.

(((~~(5) Shall conform with chapter 28B.15 RCW, the legislative budget and policies of the state board.~~))) (2) For competency-based degree programs, tuition and fees charged to students:

(a) Shall be based on the tuition and fee rates charged for a fifteen-credit load for one quarter, prorated for the length of the competency-based degree program term.

(b) For the purposes of the proration required under (a) of this subsection, a quarter shall be considered to be three months long.

WSR 14-20-064
PERMANENT RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)

[Filed September 26, 2014, 11:58 a.m., effective October 27, 2014]

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

Purpose: WAC 246-817-160 Graduates of nonaccredited schools, the rule amends education requirements for graduates of nonaccredited dental schools to update the rule with current standards and credentialing process[es].

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-160.

Statutory Authority for Adoption: RCW 18.32.0365.

Other Authority: RCW 18.32.002, 18.32.040, and 18.32.222.

Adopted under notice filed as WSR 14-12-056 on May 30, 2014.

Changes Other than Editing from Proposed to Adopted Version: The commission adopted two nonsubstantive changes by adding "to the commission" at the end of subsection (1) and deleting obsolete word "subsection" in subsection (2). However, the code reviser requires the word subsection so it was placed in the final version of the rule.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98501-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

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

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

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

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

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

Date Adopted: July 18, 2014.

Robert R. Shaw, D.M.D., Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-160 Graduates of nonaccredited schools. ((~~The following requirements apply to persons who are graduates of dental schools or colleges not accredited by the American Dental Association Commission on Accreditation.~~

~~(1) A person who has been issued a degree of doctor of dental medicine or doctor of dental surgery by a nonaccredited dental school listed by the World Health Organization, or by a nonaccredited dental school approved by the DQAC, shall be eligible to take the examination in the theory and practice of the science of dentistry upon furnishing all of the following:~~

~~(a) Certified copies of dental school diplomas.~~

~~(b) Official dental school transcripts.~~

~~(c) Proof of identification by an appropriate governmental agency. Alternate arrangements may be made for political refugees.~~

~~(d) Effective February 1, 1985, satisfactory evidence of the successful completion of at least two additional predoctoral or postdoctoral academic years of dental school education at a dental school approved pursuant to WAC 246-817-110(2) and a certification by the dean of that school that the candidate has achieved the same level of didactic and clinical competence as expected of a graduate of that school.~~

~~(2) Upon completion of the requirements in subsection (1) of this section, an applicant under this section shall be allowed to take the examination pursuant to WAC 246-817-120 and shall be subject to the applicable provisions of WAC 246-817-110. This rule supersedes WAC 246-818-090 which provided applicants one opportunity to take and pass the clinical (practical) examination, in 1985, without meeting the postgraduate training requirement.~~)) (1) An applicant for Washington state dental licensure, who is a graduate of a dental school or college not accredited by the American Dental Association Commission on Dental Accreditation shall provide to the commission:

(a) Materials listed in WAC 246-817-110 (1) and (3) through (13);

(b) Official school transcript or diploma with dental degree listed transcribed to English if necessary; and

(c) Evidence of successful completion of at least two additional predoctoral or postdoctoral academic years of dental education at a dental school approved under WAC 246-817-110(2).

(2) Upon completion of the requirements in subsection (1) of this section, an applicant may be eligible to take the examination as required in WAC 246-817-120.

WSR 14-20-067
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 26, 2014, 12:54 p.m., effective October 27, 2014]

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

Purpose: WAC 246-824-220 Retention of eyeglass and contact lens records, the rule requires that, in addition to contact lens records, dispensing opticians retain a copy of the eyeglass prescription when dispensed, and maintain records of refractive powers when neutralizing a lens for duplication and the date the lens was neutralized. Maintenance of eyeglass prescription records is vital for the continuity of care of patients.

Citation of Existing Rules Affected by this Order: Amending WAC 246-824-220.

Statutory Authority for Adoption: RCW 18.130.050(14).

Other Authority: RCW 18.34.060.

Adopted under notice filed as WSR 14-12-078 on June 3, 2014.

A final cost-benefit analysis is available by contacting Judy Haenke, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4947, fax (360) 236-2901, e-mail judy.haenke@dh[doh].wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: July 8 [15], 2014.

Dennis E. Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 94-06-047, filed 3/1/94, effective 4/1/94)

WAC 246-824-220 Retention of eyeglass and contact lens records. Dispensing opticians shall maintain eyeglass and contact lens records for a minimum of five years. ((~~Such records shall include:~~))

(1) Eyeglass records must at a minimum include:

(a) A copy of the original prescription.

(b) A copy of the refractive powers obtained when neutralizing an eyeglass lens for the purpose of duplicating the lens and the date the lens was neutralized.

(2) Contact lens records must at a minimum include:

(a) The written prescription;

((~~(2)~~)) (b) Base curve (posterior radius of curvature);

((~~(3)~~)) (c) Thickness when applicable;

((~~(4)~~)) (d) Secondary/peripheral curve, when applicable;

((~~(5)~~)) (e) Power of lens dispensed;

((~~(6)~~)) (f) Lens material, brand name ((~~and/or~~)) or manufacturer;

((~~(7)~~)) (g) Diameter, when applicable;

((~~(8)~~)) (h) Suggested wearing schedule and care regimen;

((~~(10)~~)) (i) Color, when applicable((~~;~~)).

WSR 14-20-082
PERMANENT RULES
EASTERN WASHINGTON UNIVERSITY

[Filed September 29, 2014, 10:16 a.m., effective October 30, 2014]

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

Purpose: Adopting chapter 172-90 WAC, Student academic integrity, to codify rules related to academic integrity for students of Eastern Washington University.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 14-13-038 on June 10, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 13, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 13, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2014.

Trent Lutey
University Policy Administrator

Chapter 172-90 WAC

STUDENT ACADEMIC INTEGRITY

NEW SECTION

WAC 172-90-010 General. These rules establish standards for student academic integrity at Eastern Washington University (EWU). EWU expects the highest standards of academic integrity of its students. Academic integrity is the responsibility of both students and instructors. The university supports the instructor in setting and maintaining standards of academic integrity. Academic integrity is the foundation of a fair and supportive learning environment for all students. Personal responsibility for academic performance is essential for equitable assessment of student accomplishments. Charges of violations of academic integrity are reviewed through a process that allows for student learning and impartial review.

These rules apply to all EWU instructors, staff, and students admitted to the university, including conditional or probationary admittance, and to all departments and programs, in all locations, including online. These rules provide procedures for resolving alleged violations by students. All academic integrity review proceedings are brief adjudicative proceedings and shall be conducted in an informal manner.

NEW SECTION

WAC 172-90-020 Responsibilities. (1) Vice-provosts: The vice-provosts responsible for undergraduate and graduate education, or their designees, have primary responsibility for the university academic integrity program. The vice-provosts shall:

(a) Oversee the academic integrity program;

(b) Appoint the chair and members of the academic integrity board (AIB);

(c) Maintain a system for academic integrity reporting and recordkeeping;

(d) Serve as the final authority in administering the academic integrity program;

(e) Maintain all academic integrity records per Washington state records retention standards;

(f) Coordinate academic integrity training for instructors and students, as needed or requested; and

(g) Develop and/or facilitate development of academic integrity program support resources, including guides, proce-

dures, web presence, training materials, presentations, and similar resources.

(2) Academic integrity board (AIB): The academic integrity board is a standing committee of the faculty organization. The academic integrity board is responsible for administering and managing academic integrity functions.

(a) The AIB shall:

(i) Promote academic integrity at EWU;

(ii) Review academic integrity cases, make determinations as to whether a violation occurred, and impose academic and/or institutional sanctions;

(iii) Assist vice-provosts in development of academic integrity program support resources;

(iv) Respond, as appropriate, to campus needs related to the academic integrity program;

(v) Coordinate AIB activities with the vice-provosts; and

(vi) Continually assess academic integrity process outcomes to ensure equitability of sanctions vis-à-vis violations.

(b) The AIB is appointed by the vice-provosts (jointly), based on recommendations from represented groups (e.g., colleges, library, ASEWU). Board composition or membership may be modified to support university needs with the consent of the vice-provosts and approval of the provost. At a minimum, AIB membership will include:

(i) Two members from each college, one primary and one alternate. Both must hold or have held instructor rank. The primary and alternate must be from different academic departments. The alternate shall serve when a case involves an instructor in the primary member's own department. The alternate may also serve when the primary member is not available. One of the primary members shall also be designated as vice-chair.

(ii) One member representing EWU libraries.

(iii) One student member representing ASEWU.

(iv) One chair (does not vote except to break a tie).

(c) The AIB holds regular meetings every two weeks at fixed times and reviews cases at these meetings. AIB reviews are held in abeyance during holidays, academic breaks, and other times when no classes are scheduled. AIB reviews may be canceled in other circumstances with the consent of the AIB chair. Any member who is unavailable shall inform the AIB chair who will arrange for a replacement.

(d) A quorum shall consist of three voting members plus the chair/vice-chair.

(3) Instructors shall:

(a) Know and follow the academic integrity rules and policies of the university;

(b) Include, in each course syllabus, a reference to university academic integrity standards and a clear statement that suspected violations will be handled in accordance with those standards;

(c) Hold students responsible for knowing these rules;

(d) Foster an environment where academic integrity is expected and respected;

(e) Endeavor to detect and properly handle violations of academic integrity; and

(f) Support and comply with the determinations of the AIB.

(4) Students shall:

(a) Demonstrate behavior that is honest and ethical in their academic work; and

(b) Know and follow the academic integrity rules and policies of the university.

NEW SECTION

WAC 172-90-030 Standard of proof. The standard of proof for cases of academic integrity violations is a preponderance of the evidence which is satisfied when the evidence indicates that it is more likely than not that the accused person actually committed the violation.

NEW SECTION

WAC 172-090-040 Privacy. Individual information in academic integrity matters is protected under the Family Educational Rights and Privacy Act (FERPA). The protection and release of such information shall be as provided for in chapter 172-191 WAC, Student Education Records.

Reviser's note: The above new section was filed by the agency as WAC 172-090-040. This section is placed among sections forming new chapter 172-90 WAC, and therefore should be numbered WAC 172-90-040. Pursuant to the requirements of RCW 34.08.040, the section is published in the same form as filed by the agency.

NEW SECTION

WAC 172-90-050 Course drop/withdrawal suspended. A student officially notified of charges of a violation of academic integrity may not drop or withdraw from the course while the matter is pending. Any attempt to drop or withdraw from a course under these circumstances will be considered a separate violation of these rules, unless the student is withdrawing for medical or military reasons, or other exceptional circumstances, as provided for in the university's registration policies.

If the student is found not responsible for violating academic integrity standards, the student will be permitted to withdraw from the course with a grade of "W" and with no financial penalty, regardless of the deadline for official withdrawal.

NEW SECTION

WAC 172-90-060 Continuation in course. A student may continue to attend and perform all expected functions within a course (take tests, submit papers, participate in discussions, and labs, etc.) while a charge of a violation of academic integrity is under review, even if the instructor's recommendation is a failing grade in the course, suspension or expulsion. Full status as an enrollee in a course may continue until a final sanction is imposed. A student may not continue to attend any course in which a final sanction of a failing grade has been imposed.

NEW SECTION

WAC 172-90-070 Pending cases at end of term. If a case cannot be resolved prior to the date that final grades

must be reported, the instructor will assign a grade of "N." Upon resolution of the academic integrity process, the N grade will be modified accordingly.

NEW SECTION

WAC 172-90-100 Violations and sanctions. (1) **Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) **Classes of violations:**

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated endnotes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

(3) **Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. Suspension for violation of academic integrity standards will ordinarily take place immediately. Sanctions may be combined and may include, but are not limited to:

(a) Verbal or written reprimand;

(b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;

(c) Grade penalty for the assignment/test;

(d) Course grade penalty;

(e) Course failure;

(f) Removal from the academic program;

(g) Suspension for a definite period of time; and

(h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's previous behavior. A subsequent violation may result in either suspension for one or two full terms, excluding summer terms, or permanent expulsion from the university.

(4) **Sanctioning authorities:**

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from the academic program, with the concurrence of the instructor and the department chair. The AIB may also refer the student to student rights and responsibilities with a recommendation for suspension or expulsion under the student conduct code.

(c) The student disciplinary council may impose suspension or expulsion, subject to the approval of the dean of students and the vice-president for student affairs.

NEW SECTION

WAC 172-90-120 Initiation. (1) **Reporting:** Each member of the university community is responsible for supporting academic integrity standards. Any person who suspects a violation of these rules is expected to report their suspicion to the course instructor or other appropriate university official.

A person who knowingly makes a false allegation that a violation of these rules has occurred, will be subject to disciplinary action as appropriate.

(2) **Authority:** The primary responsibility for bringing a charge of violating academic integrity standards rests with the instructor. Graduate assistants, teaching assistants, research assistants, student workers, exam proctors, online coordinators and any other persons who assist or support an instructor in teaching should report suspected violations of academic integrity standards to the instructor of record.

Instructors may be represented by their academic department chair in cases where the instructor is unavailable or otherwise unable to actively participate in the process.

(3) **Contact student:** If an instructor suspects that a violation has occurred, the instructor may elect to discuss the matter with the student prior to taking any other action.

(4) **Instructor action:** In response to a report or suspicion of violation of academic integrity standards, the instructor has the following options:

(a) Dismiss the matter: If the instructor concludes that there is no violation of these rules, the matter is over.

(b) Resolve internally: If the instructor believes that the student committed a class I violation of academic rules, the instructor may take one or more of the following actions without entering an official violation per subsection (5) of this section:

(i) Instruct the student on academic integrity standards and explain how the student failed to comply with those standards;

(ii) Allow the student to modify or redo the assignment; and/or

(iii) Provide the student with an educational opportunity to reiterate academic integrity (such as an assignment, research, course or tutorial on academic integrity).

Note: If an instructor intends to impose any sanction that will affect the student's course grade, he/she must initiate the academic integrity process; internal resolution may not be used in such cases.

If the student does not cooperate with the internal resolution, the instructor should initiate the formal academic integrity process.

(c) Initiate the academic integrity process: If the instructor believes that the student violated academic integrity standards and internal resolution is not appropriate, the instructor shall initiate the academic integrity process by reporting the violation to the vice-provost per institutional practice.

(5) **Report violation:** To initiate an academic integrity action, the instructor provides information regarding the violation to the vice-provost, including:

(a) A description of the alleged violation;

(b) A summary of any conversations the instructor has had with the student regarding the violation;

(c) The sanction(s) imposed and/or recommended by the instructor; and

(d) The method of resolution chosen by the instructor (i.e., summary process or AIB review).

When reporting the violation, the instructor may also submit documents (e.g., syllabus, test, essay, etc.) that are pertinent to the violation being reported. Alternatively, the instructor may elect to defer providing such documents unless or until the materials are later requested by the student, vice-provost, or the AIB.

Instructors must initiate this process within seven calendar days after becoming aware of the suspected violation. In cases where the student has agreed to certain conditions to resolve the matter internally, per subsection (4)(b) of this section, and the student has failed to comply with those conditions, the instructor may initiate the process up to seven calendar days after the student has failed to meet a resolution condition.

(6) **Vice-provost review.** After a violation has been reported, the vice-provost will determine whether the summary process or the AIB review process will be used.

In cases where the student has any prior violation, the vice-provost must process the case for AIB review under WAC 172-90-160.

NEW SECTION

WAC 172-90-140 Summary process. (1) **Initiation:** The summary process may be initiated when:

(a) The instructor and student both agree to the summary process; and

(b) The student has no prior violations of academic integrity.

(2) **Student notification:** The vice-provost will notify the student of the violation, proposed sanctions, and of their response options. Notification will be made to the student's official university e-mail address. If the student is no longer enrolled in the university, the vice-provost shall send the notification to the student's last known address. Notification will include:

(a) All information and documents provided by the instructor when the violation was reported;

(b) A description of the university's academic integrity rules and processes;

(c) A description of the student's options; and

(d) Contact information for the vice-provost's office where the student can request further information and assistance.

(3) **Student response options:**

(a) Concur: The student may accept responsibility for the stated violation and accept all sanctions imposed and/or recommended by the instructor. The student indicates their acceptance by following the instructions provided with the notification. The vice-provost will coordinate sanctioning with the instructor and/or the AIB as needed.

(b) Conference: The student may agree to meet with the instructor in order to discuss the alleged violation and/or proposed sanction(s). The instructor and student may discuss the matter by any means that is agreeable to both (e.g., in-person, telephonically, or via e-mail). The student shall contact the instructor to arrange a discussion time/method.

(i) In arranging a conference, the instructor shall make a reasonable effort to accommodate the student's preferences, but is not obligated to meet with the student outside of normal "office" hours. If the student and instructor cannot agree on a date/time to meet, the instructor may refer the matter to the AIB for review and board action.

(ii) During a conference, the instructor and student will attempt to reach an agreement regarding the allegation and sanction(s).

(iii) If the student and instructor come to an agreement, the instructor will inform the vice-provost of the outcome. The vice-provost will coordinate sanctioning with the instructor and/or the AIB as needed.

(iv) If the student and the instructor cannot come to an agreement, the instructor will inform the vice-provost and the matter will then be referred for AIB review and action.

(c) AIB review: The student may request that the matter be referred to the AIB for review and further action.

(d) Failure to respond: If the student does not respond to the notification within three instruction days, the vice-provost will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The vice-provost will coordinate with the instructor to impose the appropriate sanction(s).

NEW SECTION

WAC 172-90-160 AIB review process. (1) **Initiation:** The AIB review process will be initiated when:

(a) The instructor or student requests AIB review;

(b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or

(c) The vice-provost initiates a violation process against a student for repeated violations of academic integrity standards.

(2) **Scheduling:** Within five instruction days of determining that an AIB review is in order, the vice-provost shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The vice-provost will notify the student, instructor, and AIB members. Notification will include:

(a) All information and documents provided by the instructor when the violation was reported;

(b) The date/time of the AIB review;

(c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;

(d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);

(e) A description of the specific rules governing the AIB review process;

(f) A description of the university's academic integrity rules and processes; and

(g) Contact information for the vice-provost's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the vice-provost to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must respond to the AIB review notice within three instructional days. The student responds by submitting a written statement to the review board. The student may also include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. The student may submit materials by submitting them to the vice-provost.

The instructor also submits materials to the AIB by providing the materials to the vice-provost. If the instructor has not already done so, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation.

Neither the student nor the instructor is permitted to attend the AIB review.

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within three instructional days, the vice-provost will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The vice-provost will coordinate sanctioning with the instructor and/or the AIB as needed. If a recommended sanction requires AIB or higher level authority to impose, the AIB will proceed with a review.

(6) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

(7) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. The board may also refer the student to student rights and responsibilities with a recommendation for suspension or expulsion under the student conduct code.

(8) **Conclusion:** The board should conclude its review and issue a decision within thirty days after the violation was initially reported.

(9) **Requests for review:** Either the student or the instructor may request reconsideration by the vice-provost by submitting a request in writing to the vice-provost within twenty-one days after the board issues its written decision. The vice-provost shall allow the student and the instructor an opportunity to respond in writing to the student's request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the board, the vice-provost shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the vice-provost's decision and notice that judicial review may be available. All decisions of the vice-provost are final and no appeals are permitted.

NEW SECTION

WAC 172-90-180 Administration. After the resolution process, the vice-provost will coordinate sanctions and administrative actions, including:

(1) Notifying the parties of the results in writing;

(2) Creating or updating the student's academic disciplinary record;

(3) Updating academic integrity reporting and record-keeping systems;

(4) Coordinating sanctioning; and

(5) Referring cases to the student disciplinary council as needed.

NEW SECTION

WAC 172-90-200 Failing grade. A sanction of a failing course grade is recorded on the transcript as an "XF" and indicates a failure of the course due to violation of academic integrity standards. An XF is counted as a 0.0 for purposes of grade point average calculation.

(1) To petition to have an XF grade changed to an "F" (0.0), a student must submit a written request to the vice-provost. Requests will generally not be considered unless the following conditions are met:

(a) At least one year has passed since the XF grade was entered;

(b) The student has had no other violations of academic integrity standards; and

(c) The student has successfully completed a university sponsored noncredit seminar on academic integrity; or, for a person no longer enrolled at the university, an equivalent educational activity as determined by the AIB.

(2) The vice-provost will review the case and may consult with the referring instructor or academic unit head who originally reported the violation(s). If the vice-provost denies the request, the student may submit a new request one year later.

WSR 14-20-088
PERMANENT RULES
DEPARTMENT OF EARLY LEARNING

[Filed September 29, 2014, 1:16 p.m., effective October 30, 2014]

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

Purpose: To increase working connections and seasonal child care subsidy program base rates as provided under the 2014 supplemental budget, chapter 221, Laws of 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0200, 170-290-0205, and 170-290-0240.

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

Adopted under notice filed as WSR 14-17-134 on August 20, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: September 29, 2014.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 14-12-050, filed 5/30/14, effective 6/30/14)

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. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~29.10~~))	$((~~24.47~~))	$((~~23.12~~))	$((~~21.77~~))
	Half-Day	30.26	25.45	24.04	22.64
		$((~~14.57~~))	$((~~12.24~~))	$((~~11.57~~))	$((~~10.88~~))
		15.13	12.73	12.02	11.32
Spokane County	Full-Day	$((~~29.76~~))	$((~~25.03~~))	$((~~23.65~~))	$((~~22.27~~))
	Half-Day	30.95	26.03	24.60	23.16
		$((~~14.90~~))	$((~~12.53~~))	$((~~11.84~~))	$((~~11.13~~))
		15.48	13.02	12.30	11.58
Region 2	Full-Day	$((~~29.39~~))	$((~~24.53~~))	$((~~22.75~~))	$((~~20.12~~))
	Half-Day	30.57	25.51	23.66	20.92
		$((~~14.70~~))	$((~~12.27~~))	$((~~11.37~~))	$((~~10.08~~))
		15.29	12.76	11.83	10.46
Region 3	Full-Day	$((~~38.89~~))	$((~~32.43~~))	$((~~28.01~~))	$((~~27.20~~))
	Half-Day	40.45	33.73	29.13	28.29
		$((~~19.45~~))	$((~~16.21~~))	$((~~14.00~~))	$((~~13.61~~))
		20.23	16.87	14.57	14.15
Region 4	Full-Day	$((~~45.27~~))	$((~~37.80~~))	$((~~31.71~~))	$((~~28.56~~))
	Half-Day	47.08	39.31	32.98	29.70
		$((~~23.08~~))	$((~~18.91~~))	$((~~15.86~~))	$((~~14.28~~))
		23.54	19.66	16.49	14.85

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 5	Full-Day	$((~~33.19~~))	$((~~28.56~~))	$((~~25.14~~))	$((~~22.32~~))
	Half-Day	34.52	29.70	26.15	23.21
		$((~~16.59~~))	$((~~14.28~~))	$((~~12.57~~))	$((~~11.17~~))
		17.26	14.85	13.08	11.61
Region 6	Full-Day	$((~~32.63~~))	$((~~28.01~~))	$((~~24.47~~))	$((~~23.93~~))
	Half-Day	33.94	29.13	25.45	24.89
		$((~~16.33~~))	$((~~14.00~~))	$((~~12.24~~))	$((~~11.97~~))
		16.97	14.57	12.73	12.45

(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 14-12-050, filed 5/30/14, effective 6/30/14)

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. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~24.78~~))	$((~~24.78~~))	$((~~21.54~~))	$((~~21.54~~))	$((~~19.16~~))
	Half-Day	25.77	25.77	22.40	22.40	19.93
		$((~~12.38~~))	$((~~12.38~~))	$((~~10.77~~))	$((~~10.77~~))	$ ((~~9.58~~))
		12.89	12.89	11.20	11.20	9.97
Spokane County	Full-Day	$((~~25.34~~))	$((~~25.34~~))	$((~~22.03~~))	$((~~22.03~~))	$((~~19.59~~))
	Half-Day	26.35	26.35	22.91	22.91	20.37
		$((~~12.67~~))	$((~~12.67~~))	$((~~11.02~~))	$((~~11.02~~))	$ ((~~9.79~~))
		13.18	13.18	11.46	11.46	10.19
Region 2	Full-Day	$((~~26.16~~))	$((~~26.16~~))	$((~~22.75~~))	$((~~20.35~~))	$((~~20.35~~))
	Half-Day	27.21	27.21	23.66	21.16	21.16
		$((~~13.08~~))	$((~~13.08~~))	$((~~11.37~~))	$((~~10.17~~))	$((~~10.17~~))
		13.61	13.61	11.83	10.58	10.58
Region 3	Full-Day	$((~~34.71~~))	$((~~34.71~~))	$((~~29.92~~))	$((~~26.33~~))	$((~~23.93~~))
	Half-Day	36.10	36.10	31.12	27.38	24.89
		$((~~17.36~~))	$((~~17.36~~))	$((~~14.96~~))	$((~~13.17~~))	$((~~11.97~~))
		18.05	18.05	15.56	13.69	12.45
Region 4	Full-Day	$((~~40.84~~))	$((~~40.84~~))	$((~~35.51~~))	$((~~29.92~~))	$((~~28.72~~))
	Half-Day	42.47	42.47	36.93	31.12	29.87
		$((~~20.43~~))	$((~~20.43~~))	$((~~17.77~~))	$((~~14.96~~))	$((~~14.36~~))
		21.24	21.24	18.47	15.56	14.94

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 5	Full-Day	$((~~27.53~~))	$((~~27.53~~))	$((~~23.93~~))	$((~~22.75~~))	$((~~20.35~~))
	Half-Day	28.63	28.63	24.89	23.66	21.16
		$((~~13.77~~))	$((~~13.77~~))	$((~~11.97~~))	$((~~11.37~~))	$((~~10.17~~))
		14.32	14.32	12.45	11.83	10.58
Region 6	Full-Day	$((~~27.53~~))	$((~~27.53~~))	$((~~23.93~~))	$((~~23.93~~))	$((~~22.75~~))
	Half-Day	28.63	28.63	24.89	24.89	23.66
		$((~~13.77~~))	$((~~13.77~~))	$((~~11.97~~))	$((~~11.97~~))	$((~~11.37~~))
		14.32	14.32	12.45	12.45	11.83

(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.

AMENDATORY SECTION (Amending WSR 13-21-113, filed 10/22/13, effective 11/22/13)

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-four~~)) thirty-three cents per hour for the child who needs the greatest number of hours of care and two dollars and ((~~twenty-one~~)) thirty 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 14-20-090

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed September 29, 2014, 2:17 p.m., effective October 30, 2014]

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

Purpose: The purpose of this amendment is to clarify requirements related to how records may be signed. Electronic signatures are prohibited unless a physical disability makes it impossible for the provider to handwrite his or her signature.

Citation of Existing Rules Affected by this Order: Amending WAC 182-537-0700.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 14-15-147 on July 23, 2014.

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

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

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

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

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

Date Adopted: September 29, 2014.

Kevin M. Sullivan
Rules Coordinator

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

WAC 182-537-0700 School-based health care services for children in special education—School district documentation requirements. (1) ((~~For the purposes of this chapter, providers must document all health care related services as specified in the medicaid agency's current, published school-based health care services for children in special education medicaid provider guide. Assistants, as defined in WAC 182-537-0350, who provide health care related services must have their supervisor cosign any documentation in accordance with the supervisory requirements for the provider type.~~

~~(2) Health care related documentation must include, at a minimum:~~)) Providers must document in writing all health care related services in the manner set out in this section, WAC 182-502-0020, and the medicaid agency's program-specific provider guide.

(2) The following documentation must be maintained for each client:

(a) Professional assessment reports;

(b) Evaluation and reevaluation reports;

(c) Individualized education program (IEP); and

(d) Treatment notes for each date of service ((~~the provider billed the agency.~~

~~Treatment notes must include the following information:~~

~~(i) Activity and intervention involved;~~

~~(ii) Child's name;~~

~~(iii) Child's ProviderOne client ID;~~

~~(iv) Date of birth;~~

~~(v) Date of service, actual time-in and time-out, and the number of billed units for the service;~~

~~(vi) Indication if the treatment note was for individual or group therapy; and~~

~~(vii) Original signature of the licensed provider, title, and National provider identifier (NPI) number.~~

~~(3) As described in WAC 182-502-0020, all records must be legible and easily and readily available to the agency upon request~~)) that give a clear, comprehensive picture of the care being provided, the response to each intervention, and that include the:

(i) Child's name;

(ii) Child's ProviderOne client ID;

(iii) Child's date of birth;

(iv) Activity and intervention performed;

(v) Date of service;

(vi) Time-in;

(vii) Time-out;

(viii) Number of units billed for the service; and

(ix) Whether the treatment described in the note was individual or group therapy.

(3) All required documentation must include the provider's handwritten signature, title, and National Provider Identifier (NPI) number.

(a) Signature by stamp or electronic means is acceptable only if the provider is unable to sign by hand due to a physical disability.

(b) Assistants practicing under WAC 182-537-0350 must have a supervisor cosign all documents in the manner required by subsection (3) of this section.

WSR 14-20-091
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed September 29, 2014, 2:23 p.m., effective October 30, 2014]

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

Purpose: The rule change is intended to reduce the range of services subject to recovery. This change is necessary to remove a financial barrier to applying for health care coverage under the Affordable Care Act. For the Affordable Care Act to be implemented successfully, it is important to get as many people as possible to apply for health care coverage through the health benefit exchange.

Citation of Existing Rules Affected by this Order: Amending WAC 182-527-2742.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Public Law 111-148, Patient Protection and Affordable Care Act.

Adopted under notice filed as WSR 14-17-114 on August 19, 2014.

Changes Other than Editing from Proposed to Adopted Version: "Residential support waiver" added to subsection (1)(f)(ii).

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

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

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

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

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

Date Adopted: September 29, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

WAC 182-527-2742 Services subject to recovery. The medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, ((~~in order~~)) to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state-only funded long-term care services (LTC), and subsection (3) of this section covers liability for all other ((~~state-funded~~)) state-only funded services. An estate can be liable under any of these subsections.

(1) The client's estate is liable for:

(a) All medicaid services provided from July 26, 1987, through June 30, 1994;

(b) The following medicaid services provided after June 30, 1994, and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services((~~,~~));

(c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and long-term support administration (ALTSA) of the department of social and health services (DSHS); and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection((~~,~~));

(d) The following services provided on and after June 1, 2004, through December 31, 2009:

(i) All medicaid services, including those services described in subsection (c) of this section;

(ii) Medicare savings programs services for individuals also receiving medicaid;

(iii) Medicare premiums only for individuals also receiving medicaid; and

(iv) Premium payments to managed care organizations((~~,~~));

(e) The following services provided on or after January 1, 2010, through December 31, 2013:

(i) All medicaid services except those ((~~defined under~~)) described in (d)(ii) and (iii) of this subsection;

(ii) All institutional medicaid services described in (c) of this subsection (((~~(c) of this section~~));

(iii) Premium payments to managed care organizations; and

(iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid((~~,~~)); and

(f) The following services provided after December 31, 2013:

(i) Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);

(ii) Home and community-based services authorized by ALTSA or DDA, as follows:

(A) Community options program entry system (COPES);

(B) New Freedom consumer directed services (NFCDS);

(C) Basic Plus waiver;

(D) CORE waiver;

(E) Community protection waiver;

(F) Children's intensive in-home behavioral support (CIIBS) waiver;

(G) Medicaid personal care;

(H) Residential support waiver;

(iii) The portion of the Washington apple health (WAH) managed care premium used to pay for LTC services under the program of all-inclusive care for the elderly (PACE) authorized by ALTSA;

(iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington medicaid integration partnership (WMIP) authorized by ALTSA or DDA;

(v) Roads to community living (RCL) demonstration project;

(vi) Personal care services funded under Title XIX or XXI;

(vii) Private duty nursing administered by ALTSA or DDA;

(viii) Intermediate care facility for individuals with intellectual disabilities (ICF/ID) services provided in either a private community setting or in an RHC; and

(ix) Hospital and prescription drug services provided to a client while receiving services under subsection (1)(f)(i) through (viii) of this section.

(2) The client's estate is liable for all state-only funded ((~~long-term care~~)) LTC services (excluding the services listed in subsection (3)(a) through (d) of this section) and related hospital and prescription drug services provided to:

(a) Clients of the home and community services division of DSHS on and after July 1, 1995; and

(b) Clients of the ((~~developmental disabilities administration of DSHS~~)) DDA on and after June 1, 2004.

(3) The client's estate is liable for all ((~~state-funded~~)) state-only funded services provided regardless of the age of the client at the time the services were provided, with the following exceptions:

(a) State-only funded adult protective services (APS);

(b) Supplemental security payment (SSP) authorized by DDA;

(c) Offender reentry community safety program (ORCSP); and

(d) Volunteer chore services.

WSR 14-20-094

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed September 29, 2014, 3:36 p.m., effective October 30, 2014]

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

Purpose: WAC 182-504-0135 explains what a Washington apple health (WAH) client's rights are in getting his or her health care coverage reinstated while pending an appeal with the agency; and adding clarifying information to WAC 182-506-0015 that was inadvertently left out of the last revision.

Citation of Existing Rules Affected by this Order: Amending WAC 182-506-0015.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Adopted under notice filed as WSR 14-14-114 on July 1, 2014.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made to the proposed rule text in WSR 14-14-114 filed on July 1, 2014:

WAC 182-504-0135(2)

If we end or change your WAH coverage without the advance notice required by WAC 182-518-0025(3) ~~and you appeal on or before the tenth day after the date you receive the written notice of the WAH decision~~, we will reinstate (give back) your WAH coverage ~~will be reinstated and continue until the appeals process ends, unless otherwise specified in this section~~ back to the date we ended it. If our initial decision to end or change your WAH coverage was otherwise correct, we will send you a new notice that meets the requirements of chapter 182-518 WAC. This is called reinstated coverage.

WAC 182-504-0135 (3) and (4)

~~(3) We will treat the fifth day after the date on the notice as the date you received the notice; however, if you show that you received the notice more than five days after the date on the notice, we will use the actual date you received the notice for counting the ten-day appeal period for the purpose of providing continued coverage. If the tenth day falls on a weekend or holiday, you have until the next business day to appeal and still be able to receive continued coverage.~~

~~(4) You receive reinstated coverage through the end of the month an administrative hearing decision is sent to you unless:~~

~~(a) An administrative law judge or our presiding officer serves an order ending reinstated coverage; or~~

~~(b) You:~~

~~(i) Tell us in writing that you do not want reinstated coverage; or~~

~~(ii) Withdraw your appeal in writing or at an administrative proceeding.~~

WAC 182-504-0135(6)

~~A person receiving~~ If you receive WAH medically needy coverage~~, is not eligible for~~ you cannot receive reinstated coverage ~~beyond~~ past the end of the ~~original~~ certification period described in WAC 182-504-0020.

WAC 182-504-0135(7)

~~If we~~ We may end your WAH coverage ~~because~~ if mail we sent ~~to~~ you ~~was~~ is returned to us with no forwarding address~~,~~. We will reinstate your WAH coverage ~~will be reinstated~~ if ~~you continue to meet eligibility requirements and if we receive notification from you of~~ we learn your new address and you still meet WAH eligibility requirements.

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

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

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

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

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

Date Adopted: September 29, 2014.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-504-0135 Washington apple health—Reinstated coverage pending an appeal. (1) If you disagree with a Washington apple health (WAH) decision that we (the agency or its designee) made, you have the right to appeal under RCW 74.09.741. The appeal rules are found in chapter 182-526 WAC.

(2) If we end or change your WAH coverage without the advance notice required by WAC 182-518-0025(3), we will reinstate (give back) your WAH coverage back to the date we ended it. If our initial decision to end or change your WAH coverage was otherwise correct, we will send you a new notice that meets the requirements of chapter 182-518 WAC. This is called reinstated coverage.

(3) Generally, you cannot receive reinstated coverage when a change in your WAH coverage is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change.

(4) If you receive WAH medically needy coverage, you cannot receive reinstated coverage past the end of the certification period described in WAC 182-504-0020.

(5) We may end your WAH coverage if mail we sent you is returned to us with no forwarding address. We will reinstate your WAH coverage if we learn your new address and you still meet WAH eligibility requirements.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs. This section explains how medical assistance units (MAUs) are constructed for programs not based on modified adjusted gross income (MAGI) methodologies. (MAGI-based programs are described in WAC 182-503-0510.)

(1) An MAU is a person or group of people who must be included together when determining eligibility. MAUs are established based on each person's relationship to other family members and the person's financial responsibility for the other family members. MAUs for non-MAGI-based programs include an applicant and persons financially responsible for the applicant as described in subsection (2) of this section (as limited by subsection (3) of this section).

(2) Financial responsibility applies only to spouses and to parents, as follows:

(a) Married persons, living together are financially responsible for each other;

(b) Natural, adoptive, or step-parents are financially responsible for their unmarried, minor children living in the same household;

(c) Minor children are not financially responsible for their parents or for their siblings;

(d) Married persons' financial responsibility for each other when not living together because one or both are residing in a medical institution is described in chapter 182-513 WAC.

(3) The number of persons in the MAU is increased by one for each verified unborn child for each pregnant woman already included in the MAU under this section.

(4) A separate SSI-related MAU is required for:

(a) SSI recipients;

(b) SSI-related persons;

(c) Institutionalized persons;

(d) The purpose of applying medical income standards for an:

(i) SSI-related applicant whose spouse is not relatable to SSI or is not applying for SSI-related medical; and

(ii) Ineligible spouse of an SSI recipient.

(5) When determining eligibility for an SSI-related medical program, the agency determines how household income is allocated and deemed to the SSI-related person according to the rules described in WAC 182-512-0820 and 182-512-0900 through 182-512-0960.

WSR 14-20-101
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 30, 2014, 10:21 a.m., effective October 31, 2014]

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

Purpose: Amends WAC 308-10-010 to add a definition for "legitimate businesses" for purposes of releasing lists of vehicle owners under RCW 46.12.630. A recent amendment to RCW 46.12.630 (section 1, chapter 79, Laws of 2014) authorizes the release of lists of vehicle owners to "legitimate businesses as defined by the department in rule."

Citation of Existing Rules Affected by this Order: Amending WAC 308-10-010.

Statutory Authority for Adoption: RCW 46.01.110 and 46.12.630.

Adopted under notice filed as WSR 14-17-046 on August 14, 2014.

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

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

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

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

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

Date Adopted: September 30, 2014.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-010 Definitions. (1) The definitions set forth in RCW 42.56.010 shall apply to this chapter.

(2) ((~~"Designee" is a department employee authorized by the public records officer to receive and respond to a public records request.~~

~~(3)~~)) "Commercial purpose" means using or intending to use information for the purpose of facilitating a profit expecting business activity.

(3) The "department of licensing" is the agency created pursuant to chapter 46.01 RCW. The department of licensing shall hereinafter be referred to as the department. Where appropriate, the term department also refers to the staff and employees of the department of licensing.

(4) "Designee" is a department employee authorized by the public records officer to receive and respond to a public records request.

(5) "Director" means the director of the department of licensing as appointed by the governor.

(((~~(5) "Listing (list)" means an item-by-item series of names, figures, words or numbers written or printed one after the other.~~))

(6) "Individual" means a natural person.

(7) ((~~"Commercial purpose" means using or intending to use information for the purpose of facilitating a profit expecting business activity.~~

~~(8)~~)) "Legitimate business," for purposes of RCW 46.12.630, means a company with a valid and unexpired business license that is:

(a) A licensed Washington business; or

(b) Not required to be licensed in this state, but has a federal employer identification number, federal tax number, or uniform business identifier (UBI).

(8) "Listing (list)" means an item-by-item series of names, figures, words, or numbers written or printed one after the other.

(9) "Profession" when applied to department records, or the release of department record information, means any state regulated business, profession or occupation administered by the assistant director, business and professions division.

WSR 14-20-102
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed September 30, 2014, 10:30 a.m., effective October 31, 2014]

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

Purpose: Amends WAC 308-106-030 to update information required on an insurance identification card issued to drivers covered by a certificate of deposit to conform with recent legislation transferring oversight of the deposit program from the state treasurer's office to the department of licensing.

Citation of Existing Rules Affected by this Order: Amending WAC 308-106-030.

Statutory Authority for Adoption: RCW 46.01.110 and 46.30.030.

Adopted under notice filed as WSR 14-17-075 on August 18, 2014.

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

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

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

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

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

Date Adopted: September 30, 2014.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 89-22-030, filed 10/26/89, effective 11/26/89)

WAC 308-106-030 Insurance identification card—Self-insurance—Certificate of deposit—Bond. A person or organization providing proof of compliance through self-insurance, as provided in RCW 46.29.630, certificate of deposit, as provided in RCW 46.29.550, or bond, shall provide an identification card to all covered drivers. The card shall contain the following information:

(a) For persons or organizations who are self-insured:

(i) The self-insurance number issued by the department ((~~of licensing~~));

(ii) The effective date of the certificate of self-insurance; and

(iii) A description of the year, make and/or model of the vehicles covered by the certificate of self-insurance and/or the name of the driver covered by the certificate of self-insurance. The word "fleet" may be used in place of the vehicle description. The person or organization may issue a supplemental listing of vehicles covered;

(b) For persons or organizations who are covered by a certificate of deposit:

(i) The certificate number issued by the ((~~state treasurer~~)) department; and

(ii) The name of the driver covered by the certificate of deposit;

(c) For persons or organizations covered by a liability bond:

(i) The name of the company issuing the bond;

(ii) The bond number; and

(iii) The name of the driver covered by the bond.

WSR 14-20-104
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)
[Filed September 30, 2014, 12:09 p.m., effective November 1, 2014]

Effective Date of Rule: November 1, 2014.

Purpose: The community services division, economic services administration, is amending WAC 388-310-1600 to reduce the time period before closure of TANF/SFA due to failure to meet WorkFirst requirements without good cause, and to add home visitation prior to sanction for WorkFirst participants who fail to attend a good cause appointment.

The amendments are necessary to implement the WorkFirst program changes outlined in the agency detail, rec sums for the supplemental budget (ESSB 6002) that passed the legislature on March 13, 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1600.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.025; chapters 74.08A and 74.12 RCW; and ESSB 6002 agency detail, rec sums.

Adopted under notice filed as WSR 14-15-126 on July 22, 2014.

Changes Other than Editing from Proposed to Adopted Version: The department filed an initial CR-102, filing authority WSR 14-09-109 on April 23, 2014. A public hearing was held May 27, 2014. Based on comments received as part of the public hearing process, the department revised the proposed text and filed a supplemental CR-102 notice, WSR 14-15-126 on July 22, 2014. A second public hearing was held August 26, 2014, and no comments were received. Only editing changes were made to the adopted version from the version proposed with the supplemental CR-102. Changes were made to numbering in subsections (3) and (14) for clarity and in subsection (6) we added the word "level" to "supervisory employee," so it more clearly reads "supervisory level employee."

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

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

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

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

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

Date Adopted: September 25, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-042, filed 10/27/11, effective 12/1/11)

WAC 388-310-1600 WorkFirst—Sanctions. Effective ((~~July 1, 2010~~)) November 1, 2014.

(1) **What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) **What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance ((~~sanction~~)) case staffing. The letter will also schedule a home visit that will happen if you don't attend your noncompliance case staffing. We may schedule an alternative meeting, instead of a home visit, when there are safety or access issues.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance ((~~sanction~~)) case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance ((~~sanction~~)) case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an ((~~IRP~~)) individual responsibility plan to help you with your situation, including referrals to appropriate services.

(e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.

(3) **What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

((~~(iv)~~)) (d) You could not locate other care services for an incapacitated person who lives with you and your children.

((~~(d)~~)) (e) You had an immediate legal problem, such as an eviction notice; or

((~~(e)~~)) (f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) **What happens in my noncompliance ((~~sanction~~)) case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements.

(ii) What happens if you are sanctioned ((~~and stay in sanction~~));

(((~~ii~~))) (iii) How you can participate and get out of sanction status;

(((~~iii~~))) (iv) How you and your family benefit when you participate in WorkFirst activities;

(((~~iv~~))) (v) That ((~~if you continue to refuse to participate, without good cause,~~)) your case may be closed after you have been in sanction status for ((~~four~~)) two months in a row;

(((~~v~~))) (vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030;

(((~~vi~~))) (vii) How to reapply if your case is closed; and

(((~~vii~~))) (viii) That upon your third ((~~noncompliance~~)) sanction case closure after March 1, 2007, you may be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, your entire household is ineligible for TANF/SFA.

(b) If you do not come to your noncompliance ((~~sanction~~)) case staffing, we will make a decision based on the information we have and send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

(5) **What happens if we do a home visit because you didn't attend your noncompliance case staffing?**

If you didn't attend your noncompliance case staffing, and we determined you did not have a good reason for failure to meet WorkFirst requirements, we will attempt to contact you during your scheduled home visit (or alternative meeting).

(a) If we are able to contact you, we will review the information that we planned to discuss at your noncompliance case staffing, including whether you had a good reason for failing to meet WorkFirst requirements and how you can participate and get out of sanction status. If you don't have a good reason, we will follow the process to place you in sanction status.

(b) If we are unable to contact you, we will follow the process to place you in sanction status based on the determination we made at your noncompliance case staffing.

(6) **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a ((~~supervisor~~)) supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a ((~~supervisor~~)) supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request ((~~a fair~~)) an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.

(d) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(((~~6~~))) (7) **What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you ((~~do not qualify for your full grant. This is called being~~)) are placed in WorkFirst sanction status.

(((~~7~~))) (8) **Are there penalties when you or someone in your household goes into sanction status?**

(((~~a~~))) When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting). Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

(((~~b~~))) (a) If you attended your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status, you will receive a grant reduction sanction penalty.

(i) Your grant is reduced by one person's share or forty percent, whichever is more.

(ii) The reduction is effective the first of the month following ten-day notice from the department; and

(iii) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status you will receive a case closure sanction penalty.

(i) Your case may be closed the first of the month following the ten-day notice from the department.

(ii) If your case is reopened under subsection (14)(b), you will remain in sanction status and receive a grant reduction sanction penalty.

(A) Your grant is reduced by one person's share or forty percent, whichever is more.

(B) The reduction is effective the first of the month that your grant is reopened; and

(C) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(9) **What happens before your case is closed due to sanction?**

Before we close your case due to sanction status, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How you can request an administrative hearing if you disagree with this decision;

(d) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (13).

(10) **What happens if my sanction grant reduction penalty started before November 1, 2014?**

If you are in sanction and entered sanction before November 1, 2014, your case may be closed after you have been in sanction for four months in a row.

((~~(8)~~)) (11) **How do I end the penalties and get out of sanction status?**

To ((~~stop~~)) end the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

((~~(c)~~)) (12) **What happens when I get out of sanction status before my case is closed?**

When you ((~~leave~~)) get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

((~~(9)~~)) (13) **What if I reapply for TANF or SFA ((~~and I was in sanction status when my case closed~~)) and I was in sanction status when my case closed?**

If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (14). If your case ((~~closes~~)) closed for another reason while you ((~~are~~)) were in sanction status and is reopened, you will ((~~start out where you left off in~~)) reopen in month two of sanction status.

((~~That is, if you were in month two of sanction when your case closed, you will be in month three of sanction when you are approved for TANF or SFA.~~

(10) **What happens if I stay in sanction status?**

(a) We will send information to a supervisor or designee with a recommendation to close your case.

(b) A supervisor or designee will make the final decision.

(c) If the supervisor or designee approves case closure, your case will be closed after you have been in sanction for four months in a row.

(11) **What happens when a supervisor or designee approves closure of my case?**

When a supervisor or designee approves closure of your case, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How to request a fair hearing if you disagree with this decision;

(d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

(~~(12)~~)) (14) **What if I reapply for TANF or SFA after ((~~a supervisor or designee approved case closure and my case was closed~~)) my case is closed due to sanction?**

((~~If a supervisor or designee approves case closure and we close your case,~~)) (a) Except as specified in subsection (14)(b) if you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

(b) We will take the actions below if you received the sanction penalty in subsection (8)(b), you reapply for TANF or SFA after your case is closed due to sanction and you complete the interview required under WAC 388-452-0005 by the end of the month that your benefits stopped. For example, if your benefits stop effective July 1, you must reapply and complete the interview by July 31. If you meet this timeframe:

(i) We will undo your case closure sanction penalty, and we will not count the closure toward permanent disqualification under subsection (15); and,

(ii) If you are determined eligible, we will reopen your grant in sanction status with a grant reduction sanction penalty, going back to the effective date of your case closure.

((~~(13)~~)) (15) **What happens if a ((~~supervisor or designee~~)) supervisory level employee approves case closure for the third time?**

If we close your case for sanction at least three times after March 1, 2007, you will be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, any household you are in will also be ineligible for TANF/SFA.