

**WSR 17-19-007
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-234—Filed September 7, 2017, 10:21 a.m., effective October 8, 2017]

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 Rules Affected by this Order: Amending WAC 220-354-290.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 17-15-065 on July 13, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 6, 2017.

J. W. Unsworth
Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-354-290 Grays Harbor salmon 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 shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
((7:00 a.m.)) <u>12:01 p.m.</u> through 7:00 p.m. October 24;	Area 2A and Area 2D
7:00 a.m. through 7:00 p.m. October 25;	

Time:	Areas:
((AND 7:00 a.m. through 7:00 p.m. October 26; 6:30 a.m. through 6:30 p.m. October 17; 6:30 a.m. through 6:30 p.m. October 18; 7:00 a.m. through 7:00 p.m. October 30; AND 7:00 a.m. through 7:00 p.m. October 31.))	
<u>6:00 a.m. through 6:00 p.m. October 30;</u>	
<u>6:00 a.m. through 6:00 p.m. October 31;</u>	
<u>7:00 a.m. through 7:00 p.m. November 6;</u>	
<u>7:00 a.m. through 7:00 p.m. November 7;</u>	
<u>7:00 a.m. through 7:00 p.m. November 8;</u>	
<u>AND 7:00 a.m. through 7:00 p.m. November 9;</u>	
<u>6:00 a.m. through 6:00 p.m. October 23;</u>	<u>Area 2C</u>
<u>6:00 a.m. through 6:00 p.m. November 2;</u>	
<u>7:00 a.m. through 7:00 p.m. November 6;</u>	
<u>AND 7:00 a.m. through 7:00 p.m. November 7.</u>	

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))~~ aboard 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 November 30: 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 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.

(c) Area 2C from October 1 through November 30: 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 nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon 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 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 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.

(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 1 through November 30.

(5) Retention of any species other than Chinook, chum, coho or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-352-180, reports must be made by 10:00 a.m. the day following landing.

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email 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 email. Notice of intent must be given prior to 12:00 p.m. on October 1, for openings in Areas 2A, 2C, or 2D.

(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 17-19-008
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-229—Filed September 7, 2017, 10:24 a.m., effective October 8, 2017]

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

Purpose: Amends rules for coastal freshwater recreational salmon fishing and includes WAC 220-312-020 Freshwater exceptions to statewide rules—Coast. The freshwater recreational salmon fishing rules that are based on North of Falcon recommendations change from year to year to reflect current resource availability and to achieve conservation goals. Amendments to recreational salmon fishing rules are needed to implement the agreed-upon changes.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 17-15-062 on July 13, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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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 5, 2017.

J. W. Unsworth
 Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-312-020 Freshwater exceptions to statewide rules—Coast. (1) Aberdeen Lake (Grays Harbor County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: No more than 2 trout over 15 inches in length may be retained.

(2) Alder Creek (Pacific County) (Naselle River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(3) Anderson Lake (Jefferson County): ~~((a))~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((b)) Open September 1 through October 31.~~

~~(i) Selective gear rules apply.~~

~~(ii) Trout: Catch and release only.~~

(4) Bear Creek (Clallam County) (Bogachiel River tributary):

(a) Open the first Saturday in June through ~~((August))~~ October 31.

(b) It is unlawful to use anything other than one barbless hook.

(c) It is unlawful to use bait.

(d) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release wild (unclipped) rainbow trout.

(5) Bear Creek (Clallam County) (Sol Duc River tributary):

(a) Open the first Saturday in June through ~~((August))~~ October 31.

(b) It is unlawful to use anything other than one barbless hook.

(c) It is unlawful to use bait.

(d) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release wild (unclipped) rainbow trout.

(6) Bear River (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through March 31.

(c) August 16 through November 30: Night closure in effect.

(i) From the mouth (Highway 101 Bridge) to Lime Quarry Road (approximately two river miles):

(A) August 16 through November 30:

(I) Barbless hooks required.

(II) Anti-snagging rule applies.

(B) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(C) Salmon:

(I) Open September 1 through January 31.

(II) Limit 6 fish; only 4 may be adults.

(III) Release wild Chinook.

(ii) From the Lime Quarry Road upstream to the Longview Fiber Bridge:

(A) Selective gear rules apply.

(B) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(7) Beaver Creek (Clallam County) (Sol Duc River tributary):

(a) From the mouth upstream to Beaver Falls:

(i) Open the first Saturday in June through ~~((August))~~ October 31.

(ii) It is unlawful to use anything other than one barbless hook.

(iii) It is unlawful to use bait.

(iv) Trout:

(A) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

- (B) Release wild (unclipped) rainbow trout.
- (b) From Beaver Falls upstream to Beaver Lake: Open the first Saturday in June through October 31.
- (8) **Beaver Lake (Clallam County):**
- (a) Selective gear rules apply.
- (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (c) Trout: Maximum length 12 inches.
- (9) **Big Creek (Grays Harbor County):**
- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (10) **Big River (Clallam County), outside of Olympic National Park:**
- (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
- (b) Open the first Saturday in June through October 15, and January 1 through the last day of February.
- (c) Selective gear rules apply.
- (d) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (e) Trout:
- (i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
- (ii) Release kokanee.
- (11) **Black Creek (Grays Harbor County) (Wynoochee River tributary):**
- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (12) **Black Lake (Pacific County):** Open the fourth Saturday in April through October 31.
- (13) **Black River (Grays Harbor/Thurston counties):**
- (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
- (b) From the mouth to State Highway 12:
- (i) Open the first Saturday in June through October 31.
- (ii) Selective gear rules apply.
- (iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
- (c) From Highway 12 to bridge on 128th Ave. S.W.:
- (i) Anti-snagging rule applies.
- (ii) Night closure in effect.
- (iii) Barbless hooks are required.
- (iv) Open for game fish the first Saturday in June through October 31; trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
- (v) Salmon: Open October 1 through December 31.
- (A) Daily limit 6, of which 2 may be adults.
- (B) Only one wild coho may be retained.
- (C) Release Chinook and chum.
- (d) From bridge on 128th Avenue S.W. (west of Litterock) to Black Lake:
- (i) Open the first Saturday in June through October 31.
- (ii) Selective gear rules apply.
- (14) **Bogachiel River (Clallam County):**
- (a) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (b) Release wild (unclipped) rainbow trout.

- (c) It is unlawful to use anything other than one barbless hook.
- (d) From the mouth to ~~((mouth of Mill Creek))~~ Highway 101 Bridge:
- (i) Open the first Saturday in June through ~~((August 31 and November 16 through))~~ April 30.
- (ii) It is unlawful to use bait the first Saturday in June through ~~((September 30))~~ August 31 and February 16 through April 30.
- (iii) Trout:
- (A) From the first Saturday in June through ~~((August 31 and November 16 through))~~ March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
- (B) From April 1 through April 30: Trout minimum length 14 inches.
- (C) November ~~((4))~~ 1 through last day in February: The limit may include one additional hatchery steelhead.
- (iv) Salmon open July 1 through ~~((August 31 and))~~ November ~~((16 through))~~ 30:
- (A) From July 1 through August 31:
- (I) Limit 6; no more than 2 adults may be retained.
- (II) Release wild adult Chinook and wild adult coho.
- (B) From ~~((November 16))~~ September 1 through November 30: Limit ~~((one; release wild coho.~~
- ~~(c) From the mouth of Mill Creek to the Highway 101 Bridge:~~
- ~~(i) Open the first Saturday in June through August 31 and December 1 through April 30.~~
- ~~(ii) It is unlawful to use bait the first Saturday in June through September 30 and February 16 through April 30.~~
- ~~(iii) Trout:~~
- ~~(A) From the first Saturday in June through August 31 and December 1 through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~
- ~~(B) From April 1 through April 30: Trout minimum length 14 inches.~~
- ~~(C) December 1 through last day in February: The limit may include one additional hatchery steelhead.~~
- ~~(iv) Salmon open July 1 through August 31.~~
- ~~(I) Limit 6; no more than 2 adults may be retained.~~
- ~~(II) Release wild adult Chinook and wild adult coho.~~
- ~~(f)) 3; no more than one adult may be retained.~~
- ~~(e) From Highway 101 Bridge to Olympic National Park boundary:~~
- ~~(i) Open the first Saturday in June through ((August 31 and December 1 through)) April 30.~~
- ~~(ii) It is unlawful to use bait.~~
- ~~(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.~~
- (15) **Bone River (Pacific County):**
- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (16) **Bunker Creek (Lewis County) (Chehalis River tributary):**
- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(17) Butte Creek (Pacific County) (Smith River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(18) Calawah River (Clallam County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

- (b) Release wild (unclipped) rainbow trout.

(c) It is unlawful to use anything other than one barbless hook.

- (d) From the mouth to the Highway 101 Bridge:

(i) Open the first Saturday in June through ~~((August 31 and November 16 through))~~ April 30.

(ii) It is unlawful to use bait the first Saturday in June through ~~((September 30))~~ August 31 and February 16 through April 30.

- (iii) Trout:

(A) From the first Saturday in June through ~~((August 31 and November 16 through))~~ March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 30: Trout minimum length 14 inches.

(C) From November ~~((16))~~ 1 through the last day in February: The limit may include one additional hatchery steelhead.

(iv) Salmon open July 1 through ~~((August 31 and November 16 through))~~ November 30:

- (A) From July 1 through August 31:

(I) Limit 6; only 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From ~~((November 16))~~ September 1 through November 30: Limit ~~((one; release wild coho))~~ 3; only one adult may be retained.

- (e) From the Highway 101 Bridge to the forks:

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

- (ii) It is unlawful to use bait.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(19) Calawah River, North Fork (Clallam County):

(a) Open the first Saturday in June through ~~((August))~~ October 31.

(b) It is unlawful to use anything other than one barbless hook.

- (c) It is unlawful to use bait.

- (d) Release wild (unclipped) rainbow trout.

(e) Trout: ((+)) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii) Release wild (unclipped) rainbow trout.)~~

(20) Calawah River, South Fork (Clallam County):

~~((a) ((Open the first Saturday in June through August 31 and December 1 through the last day in February from the mouth to the Olympic National Park boundary.~~

~~((b))~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((e))~~ (b) It is unlawful to use anything other than one barbless hook.

~~((d))~~ (c) It is unlawful to use bait.

~~((e) Trout:~~

~~((+))~~ (d) Release wild (unclipped) rainbow trout.

(e) From the mouth to the Olympic National Park boundary:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii) Release wild (unclipped) rainbow trout.)~~

(21) Cases Pond (Pacific County):

(a) Open the fourth Saturday in April through November 30 to juvenile anglers only.

- (b) Landlocked salmon rules apply.

(22) Cedar Creek (Clallam County), outside of Olympic National Park:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

- (b) Open the first Saturday in June through October 31.

- (c) Selective gear rules apply.

(d) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(23) Cedar Creek (Grays Harbor/Thurston counties) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

(24) Cedar Creek (Jefferson County), outside Olympic National Park:

(a) Open the first Saturday in June through the last day in February.

- (b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(25) Cedar River (Pacific County):

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

- (c) Catch and release only.

(26) Chehalis River (Grays Harbor County), including all channels, sloughs, and interconnected waterways:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 101 Bridge in Aberdeen) to South Elma Bridge (Wakefield Road) including all channels, sloughs, and interconnected waterways:

- (i) All species August 1 through November 30:

- (A) Single-point barbless hooks are required.

(B) Anglers may fish with two poles from the mouth to the South Elma Bridge (Wakefield Road), provided they possess a valid two-pole endorsement.

- (ii) Game fish:

- (A) Open the first Saturday in June through April 15:

(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

- (iii) Salmon:

- (A) ~~((Open April 16 through June 30: Limit one salmon. (B) Open))~~ From August 1 through September 15:
- (I) Limit 6.
(II) Release adult salmon.
~~((C)) (B) From~~ September 16 through ((January)) December 31:
- (I) Limit 6; only ~~((one))~~ two adults may be retained.
(II) Only one wild adult coho may be retained.
(III) Release ~~((wild))~~ adult Chinook ((and wild coho)).
~~(C) From January 1 through January 31:~~
(I) Limit 6; only two adults may be retained.
(II) Release Chinook and wild coho.
- (c) From South Elma Bridge (Wakefield Road) to the ~~((Porter Boat Launch))~~ confluence with Black River:
- (i) All species: Single-point barbless hooks are required August 1 through November 30.
(ii) Game fish:
(A) Open the first Saturday in June through April 15.
(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
(iii) Salmon:
(A) ~~((Open April 16 through June 30: Limit one salmon. (B) Open August 1 through September 15: (I) Limit 6. (II) Release adult salmon. (C) Open))~~ From September 16 through ~~((January))~~ December 31:
- (I) Limit 6; only ~~((one))~~ two adults may be retained.
(II) Only one wild adult coho may be retained.
(III) Release ~~((wild))~~ Chinook ((and wild coho)).
~~(B) From January 1 through January 31:~~
(I) Limit 6; only two adults may be retained.
(II) Release Chinook and wild coho.
- (d) ~~((From Porter Boat Launch to the Highway 6 Bridge in the town of Adna:~~
- (i) ~~All species August 16 through November 30: Single-point barbless hooks are required.~~
- (ii) ~~Game fish:~~
- (A) ~~Open the first Saturday in June through April 15:~~
- (B) ~~Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~
- (iii) ~~Salmon:~~
- (A) ~~Open April 16 through June 30: Limit one salmon.~~
- (B) ~~Open September 16 through January 31:~~
- (I) ~~Limit 6; only one adult may be retained.~~
- (II) ~~Release wild Chinook, wild coho, and chum.~~
- (e) ~~From the ((Highway 6 Bridge in the town of Adna))~~ confluence of Black River to the high bridge on Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek (south of Pe Ell):
- (i) All species August 16 through November 30: Single-point barbless hooks are required.
(ii) Game fish:
(A) Open the first Saturday in June through April 15.
(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
(iii) Salmon:

- (A) ~~((Open))~~ From September 16 through ~~((January))~~ December 31:
- (I) Limit 6; only ~~((one))~~ two adults may be retained.
(II) Only one wild coho may be retained.
(III) Release Chinook~~((wild coho))~~ and chum.
~~((F)) (B) From January 1 through January 31:~~
(I) Limit 6; only two adults may be retained.
(II) Release Chinook, chum, and wild coho.
- (e) From high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek, south of Pe Ell, including all forks) upstream:
- (i) Open the first Saturday in June through April 15.
(ii) Selective gear rules apply.
(iii) Release all fish, except anglers may retain up to 2 hatchery steelhead.
- (27) **Chehalis River, South Fork (Lewis County):**
- (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
(b) From the mouth to County Highway Bridge near Boistfort School:
(i) Open the first Saturday in June through April 15.
(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
(c) From the County Highway Bridge near Boistfort School, upstream:
(i) Open the first Saturday in June through October 31.
(ii) Selective gear rules apply.
- (28) **Chenois Creek (Grays Harbor County):**
- (a) Open the first Saturday in June through October 31.
(b) Selective gear rules apply.
- (29) **Chester Creek (Grays Harbor County):**
- (a) Open the first Saturday in June through October 31.
(b) Selective gear rules apply.
- (30) **Chimacum Creek (Jefferson County):**
- (a) From the mouth to Ness's Corner Road:
(i) Open the first Saturday in June through August 31.
(ii) Selective gear rules apply.
(iii) Catch and release only.
(b) From Ness's Corner Road to headwaters:
(i) Open the first Saturday in June through October 31.
(ii) Selective gear rules apply.
(iii) Catch and release only.
- (31) **Clallam River (Clallam County):**
- (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
(b) Open the first Saturday in June through January 31.
(c) Selective gear rules apply from the first Saturday in June through October 31.
(d) From the first Saturday in June through October 31: Catch and release only.
(e) Trout: Minimum length 14 inches.
- (32) **Clearwater River (Jefferson County):**
- (a) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(b) It is unlawful to use anything other than one barbless hook.
(c) Release wild (unclipped) rainbow trout.
(d) From the mouth to Snahapish River:

(i) Open the first Saturday in June through ~~((August 31))~~ September 30 and December 1 through April 15:

(ii) It is unlawful to use bait the first Saturday in June through ~~((September 30))~~ August 31 and February 16 through April 15.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iv) Salmon: Open September 1 through September 30:

(A) Limit 3; only one adult may be retained;

(B) Release wild coho.

(e) From Snahapish River upstream:

(i) Open the first Saturday in June through ~~((August 31))~~ September 30.

(ii) It is unlawful to use bait.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(33) Cloquallum Creek (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the outlet at Stump Lake:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(c) From the outlet at Stump Lake upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(34) Coal Creek (Clallam County) tributary to Ozette River, outside the Olympic National Park boundary:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(ii) Release kokanee.

(35) Connor Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(36) Cook Creek (Grays Harbor County), from the Quinault Indian Reservation boundary upstream:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(37) Copalis River (Grays Harbor County):

(a) ~~((General river rules:))~~ From the mouth to Carlisle Bridge:

(i) From the first Saturday in June through last day in February: Open for game fish.

(ii) It is permissible to retain hatchery steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

~~((b) Rules by river section:~~

~~(i) From the mouth to Carlisle Bridge:~~

~~(A))~~ (iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((B))~~ (iv) Salmon:

~~((H) Open))~~ (A) From October 1 through ~~((January))~~ December 31.

~~((H))~~ (B) Limit 6; only ~~((one))~~ two adult salmon may be retained.

~~((H))~~ (I) Only one wild adult coho may be retained.

(II) Release ~~((adult))~~ Chinook ~~((and chum))~~.

~~((H))~~ (b) From Carlisle Bridge upstream: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(38) Crim Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(39) Crocker Lake (Jefferson County): Closed.

(40) Crooked Creek (Clallam County) and tributaries that are outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(41) Damon Lake (Grays Harbor County): Open the first Saturday in June through October 31.

(42) Deep Creek (Clallam County) ~~((Humptulips River tributary))~~:

(a) Open December 1 through January 31.

(b) Selective gear rules apply.

(c) Release all fish, except mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(43) Deep Creek (Grays Harbor County) (Humptulips River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(44) Delezene Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(45) Dickey River (Clallam County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Release wild (unclipped) rainbow trout.

(c) It is unlawful to use anything other than one barbless hook.

(d) From Olympic National Park boundary upstream to the confluence of the East and West forks:

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

(ii) It is unlawful to use bait the first Saturday in June through ~~((September 30))~~ August 31 and February 16 through April 30.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iv) Salmon: Open July 1 through ~~((August 31))~~ November 30:

(A) July 1 through August 31:

(I) Limit 6; only 2 adults ~~((salmon))~~ may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) September 1 through November 30: Limit 3; only one adult may be retained.

(e) From the confluence of the East and West forks upstream (for both forks):

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

(ii) It is unlawful to use bait.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(46) Donkey Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(47) Duck Lake (Grays Harbor County):

(a) Crappie: No limit and no minimum length.

(b) Grass carp: No limit for anglers and bow and arrow fishing.

(48) Dungeness River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the forks at Dungeness Forks Campground:

(i) Open October 6 through January 31.

(ii) Trout: Minimum length 14 inches.

(iii) Salmon:

(A) Open ~~((only))~~ October 16 through November 30 from the mouth to the hatchery intake pipe at river mile 11.3 ~~((from October 16 through December 31)).~~

(B) Limit 4 coho only.

(C) Release wild coho.

(c) From Gold Creek upstream: Open the Saturday before Memorial Day through October 31.

(49) East Twin River (Clallam County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(50) Eight Creek (Lewis County) (tributary to Elk Creek, which is a Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(51) Elk Creek (Clallam County), outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(52) Elk Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(53) Elk Lake (Clallam County):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(54) Elk River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 105 Bridge) to the confluence of the middle branch:

(i) Open the first Saturday in June through the last day in February.

(ii) From August 16 through November 30: Single-point barbless hooks are required.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iv) Salmon: Open October 1 through November 30.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild adult coho may be retained.

(C) Release adult Chinook.

(c) From confluence of the middle branch upstream:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(55) Elkhorn Creek (Pacific County) (Smith Creek tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(56) Ellis Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(57) Ellsworth Creek (Pacific County) (Naselle River tributary):

(a) Open the first Saturday in June through September 30.

(b) Selective gear rules apply.

(58) Failor Lake (Grays Harbor County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: It is unlawful to retain more than two trout over 15 inches in length per day.

(59) Fairchild Creek (Pacific County) (Wilson Creek tributary, which is a Willapa River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(60) Fall River (Pacific County) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(61) Falls Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(62) Fern Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(63) Finn Creek (Pacific County) (North Nema River tributary): Open the first Saturday in June through October 31.

(64) Fork Creek (Pacific County) (Willapa River tributary):

(a) From Forks Creek Hatchery rack upstream 500 feet at fishing boundary sign:

(i) Open only for anglers with lower extremity disabilities who must permanently use a medically prescribed assistive device every time for mobility as defined in WAC 220-413-150 and possess a designated harvester companion card.

(ii) Night closure in effect.

(iii) From October 1 through November 30:

(A) Single-point barbless hooks are required.

(B) Stationary gear restriction applies.

(iv) Open the first Saturday in June through July 15 and October 1 through March 31: Release all fish, except anglers may retain up to 2 hatchery steelhead.

(v) Salmon open October 1 through January 31.

(A) From October 1 through November 30:

(I) Limit 6; only 3 adults may be retained, and only 2 may be wild (~~adult~~) coho.

(II) Release wild Chinook.

(B) From December 1 through January 31:

(I) Limit 6; only 2 adults may be retained, and only one may be a wild (~~adult~~) coho.

(II) Release wild Chinook.

(b) From the fishing boundary sign 500 feet above Forks Creek Hatchery rack upstream to the source:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(65) Garrard Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(66) Gibbs Lake (Jefferson County):

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: Catch and release only.

(67) Goodman Creek (Jefferson County), outside Olympic National Park:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through the last day in February.

(c) Selective gear rules apply.

(d) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(68) Grass Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(69) Gray Wolf River (Clallam County): From the bridge at river mile 1.0, upstream:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(70) Halfmoon Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(71) Halfway Creek (Lewis County) (tributary of Stillman Creek, which is a Chehalis River tributary):

(a) Open the first Saturday in June through October 31 from the mouth to the second bridge crossing on Pe Ell McDonald Road.

(b) Selective gear rules apply.

(72) Hanaford Creek (Lewis County) (Skookumchuck River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(73) Harris Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Trout: Selective gear rules apply.

(74) Hoh River (Jefferson County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Release wild (unclipped) rainbow trout.

(c) It is unlawful to use anything other than one barbless hook.

(d) From the Olympic National Park boundary upstream to the DNR Oxbow Campground Boat Launch:

(i) Open (~~August 1 through October 10 and November 21 through April 15~~).

(A) From August 1 through October 10 and November 21 through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit) July 1 through August 31 and September 16 through April 15:

(A) From July 1 through August 31 and September 16 through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 15: Trout minimum length 14 inches.

(C) From November (~~(21)~~) 1 through February 15: The trout limit may include one additional hatchery steelhead.

(ii) It is unlawful to use bait the first Saturday in June through September 30 and February 16 through April 15.

(iii) Salmon: Open September (~~(+)~~) 16 through (~~(October 10 and November 21 through)~~) November 30: Limit 6; only (~~(one)~~) 2 adults may be retained(~~(-Release wild coho)~~) of which only one may be a Chinook.

(e) From the DNR Oxbow Campground Boat Launch to Morgans Crossing Boat Launch (~~(site)~~):

(i) Open (~~(August)~~) July 1 through (~~(October 10 and November 21 through)~~) August 31 and September 16 through April 15.

(ii) It is unlawful to use bait.

(iii) (~~(From August 1 through April 15:)~~) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iv) Salmon open (~~(November 21)~~) October 16 through November 30: Limit 6; only ~~((one))~~ 2 adults may be retained, of which only one may be a Chinook. (~~(Release wild coho.)~~)

(f) From Morgan's Crossing Boat Launch upstream to the Olympic National Park boundary below mouth of South Fork Hoh River:

(i) Open (~~(August)~~) July 1 through (~~(October 10 and November 21 through)~~) August 31 and September 16 through April 15.

(ii) It is unlawful to use bait.

(iii) It is unlawful to fish from a floating device.

(iv) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(75) Hoh River, South Fork (Jefferson County), outside the Olympic National Park boundary:

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Open (~~(August)~~) July 1 through (~~(October 10 and November 21 through)~~) August 31 and September 16 through April 15.

(c) It is unlawful to use anything other than one barbless hook.

(d) It is unlawful to use bait.

(e) Release wild (unclipped) rainbow trout.

(f) Trout: ~~((+))~~ Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii) Release wild (unclipped) rainbow trout.)~~

(76) Hoko River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the upper Hoko Bridge:

(i) Closed to fishing from the hatchery ladder downstream 100 feet.

(ii) Open the first Saturday in June through March 15. Open to fly fishing only September 1 through October 31, except mandatory retention of hatchery steelhead.

(iii) Trout: Minimum length fourteen inches.

(c) From the upper Hoko Bridge to Ellis Creek Bridge (river mile 18.5):

(i) Open the first Saturday in June through March 31 to fly fishing only, except mandatory retention of hatchery steelhead.

(ii) Release all fish except anglers may retain up to two hatchery steelhead, except mandatory retention of hatchery steelhead.

(77) Hoquiam River, including West Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 101 Bridge on Simpson) to Dekay Road Bridge (West Fork):

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day of February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon: Open October 1 through December 31.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild coho may be retained.

(C) Release Chinook.

(c) From Dekay Road Bridge upstream:

(i) Open the first Saturday in June through the last day of February.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(78) Hoquiam River, East Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the confluence of Berryman Creek:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day of February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon: Open October 1 through December 31.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild coho may be retained.

(C) Release Chinook.

(c) From the confluence of Berryman Creek upstream to Youman's Road Bridge:

(i) Open the first Saturday in June through the last day of February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(79) Hoquiam River, Middle Fork (Grays Harbor County): From the mouth upstream:

(a) Open the first Saturday in June through last day of October.

(b) Selective gear rules apply.

(80) Horseshoe Lake (Jefferson County):

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

(81) Howe Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(82) Humptulips River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Jessie Slough) to the Highway 101 Bridge, including all channels, sloughs, and interconnected waterways:

(i) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to

retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open September 1 through January 31:

(A) From September 1 through ~~((September 30))~~ October 15:

(I) Limit 6; only 2 adults may be retained ~~((and only one may be a wild adult Chinook))~~.

(II) Release wild Chinook and wild coho.

(B) From October ~~((+))~~ 16 through ~~((November 15))~~ October 31:

(I) Limit 6; only 2 adults may be retained, and only one may be ~~((an adult))~~ a Chinook.

(II) Release wild Chinook and wild coho.

(C) From November ~~((+6))~~ 1 through January 31:

(I) Limit 6: Only ~~((one))~~ two adults may be retained.

(II) Release Chinook and wild coho.

(c) From the Highway 101 Bridge to the confluence of the East and West forks:

(i) From December 1 through March 31: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(ii) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(iii) Open the first Saturday in June through March 31:

(A) From the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From March 1 through March 31:

(I) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(II) Selective gear rules apply.

(iv) Salmon open September 1 through January 31:

(A) From September 1 through ~~((September 30))~~ October 15:

(I) Limit 6; only 2 adults may be retained ~~((and only one may be a wild adult Chinook))~~.

(II) Release wild Chinook and wild coho.

(B) From October ~~((+))~~ 16 through ~~((November 15))~~ October 31:

(I) Limit 6; only 2 adults may be retained, and only one may be ~~((an adult))~~ a Chinook.

(II) Release wild Chinook and wild coho.

(C) From November ~~((+6))~~ 1 through January 31:

(I) Limit 6; only ~~((one))~~ two adults may be retained.

(II) Release Chinook and wild coho.

(83) Humptulips River, East Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the concrete bridge on Forest Service Road 220:

(i) August 16 through October 31: Anti-snagging rule applies and night closure in effect.

(ii) Open the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((b))~~ (c) From the concrete bridge on Forest Service Road 220 upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(84) Humptulips River, West Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to Donkey Creek:

(i) August 16 through November 30: Anti-snagging rule applies and night closure in effect.

(ii) Open the first Saturday in June through March 31:

(A) From the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From March 1 through March 31:

(I) Selective gear rules apply.

(II) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(III) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(c) From Donkey Creek upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(85) Independence Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(86) Jimmy-Come-Lately Creek (Clallam County):

(a) From the mouth to confluence with East Fork:

(i) Open the first Saturday in June through August 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

(b) From confluence with East Fork upstream, including East Fork: Open the first Saturday in June through October 31.

(87) Joe Creek (Grays Harbor County):

(a) From the mouth to Ocean Beach Road Bridge:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through November 30: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 1 through ~~((November 30))~~ December 31:

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild adult Coho may be retained.

(C) Release ~~((adult))~~ Chinook ~~((and chum))~~.

(b) From Ocean Beach Road Bridge upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(88) Johns River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 105 Bridge) to Ballon Creek:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon: Open October 1 through November 30.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild adult coho may be retained.

(C) Release adult Chinook.

(c) From Ballon Creek upstream, including North and South Forks:

(i) Open the first Saturday in June through September 30 and December 1 through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(89) Jones Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(90) Kalaloch Creek (Jefferson County), outside Olympic National Park:

(a) Closed within the section posted as the Olympic National Park water supply.

(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) Open the first Saturday in June through the last day in February:

(i) Selective gear rules apply.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(91) Leland Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(92) Lena Lake, Lower (Jefferson County): The inlet stream is closed from the mouth upstream to the footbridge (about 100 feet).

(93) Lincoln Creek, including South Fork (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(94) Lincoln Pond (Clallam County): Open to juvenile anglers only.

(95) Little Hoko River (Clallam County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(96) Little Hoquiam River (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(97) Little North River (Grays Harbor County) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(98) Little Quilcene River (Jefferson County):

(a) From the mouth to the Little Quilcene River Bridge on Penny Creek Road:

(i) Open the first Saturday in June through October 31.

(ii) From the mouth to Highway 101 Bridge: Open first Saturday in June through August 31.

(iii) Selective gear rules apply.

(iv) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(v) Catch and release only.

(b) From Little Quilcene River Bridge on Penny Creek Road upstream: Open the first Saturday before Memorial Day through October 31.

(99) Long Beach Peninsula waterways and lakes (Pacific County): Open the fourth Saturday in April through October 31.

(100) Loomis Lake (Pacific County): Open the fourth Saturday in April through October 31.

(101) Loomis Pond (Grays Harbor County): Closed.

(102) Lower Salmon Creek (Grays Harbor/Pacific counties) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(103) Lucas Creek (Lewis County) (tributary to the Newaukum River North Fork):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Catch and release only.

(104) Ludlow Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(105) Ludlow Lake (Jefferson County): Open the fourth Saturday in April through October 31.

(106) Lyre River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to falls near river mile 3:

(i) Open the first Saturday in June through January 31.

(ii) Trout: Minimum length 14 inches.

(c) From the falls to the Olympic National Park boundary:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only, except mandatory hatchery steelhead retention applies.

(107) Matheny Creek (Jefferson County) (Queets River tributary), outside Olympic National Park:

(a) Open the first Saturday in June through ~~((August 31))~~ September 30.

(b) It is unlawful to use ~~((anything other than one barbless hook))~~ bait.

(c) Release wild (unmarked) rainbow trout.

(d) It is unlawful to use anything other than one barbless hook.

(e) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((d) Release wild (unmarked) rainbow trout.))~~

(108) McDonald Creek (Clallam County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(109) Middle Nemah River (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth upstream to the department of natural resources bridge on the Middle Nemah A-Line Road:

(i) Open the first Saturday in June through March 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

(ii) August 1 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; no more than 4 adults may be retained.

(C) Release wild Chinook.

(c) From the department of natural resources bridge on the Middle Nemah A-Line Road upstream:

(i) Open the first Saturday in June through March 31:

(A) Selective gear rules apply.

(B) Release all fish, except mandatory retention of hatchery steelhead.

(ii) August 16 through November 30:

~~(A) Anti-snagging rule applies ((and)).~~

~~(B) Night closure in effect.~~

(110) Mill Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(111) **Mill Creek Pond (Grays Harbor County):** Open to juvenile anglers only.

(112) Mitchell Creek (Lewis County) (tributary to the Newaukum River North Fork):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Catch and release only.

(113) Moclips River (Grays Harbor County):

(a) Open from the mouth to the Quinault Indian Reservation boundary from the first Saturday in June through the last day in February.

(b) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) It is permissible to retain steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

(c) Salmon: Open October 1 through December 31.

(i) Daily limit 6, of which 2 may be adults.

(ii) Only one wild adult coho may be retained.

(iii) Release Chinook.

(114) Morse Creek (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to Port Angeles Dam:

(i) Open from December 1 through January 31.

(ii) Trout: Minimum length 14 inches.

(c) From Port Angeles Dam upstream: Open the first Saturday in June through October 31.

(115) Mosquito Creek (Jefferson County):

(a) Open outside Olympic National Park upstream to the Goodman 3000 Mainline Bridge from the first Saturday in June through the last day in February.

(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) Selective gear rules apply.

(d) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(116) Mox Chehalis Creek (Grays Harbor County) (Chehalis River tributary): Open the first Saturday in June through October 31: Selective gear rules apply.

(117) Naselle River (Pacific/Wahkiakum counties):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Selective gear rules apply February 1 through April 15.

(c) From the Highway 101 Bridge to the Highway 4 Bridge:

(i) From August 1 through November 15:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(C) Barbless hooks are required.

(D) From the South Fork upstream to the Highway 4 Bridge: Stationary gear restriction applies.

(ii) From Highway 101 Bridge upstream to Highway 401: Anglers may fish with two poles August 1 through January 31, provided they possess a valid two-pole endorsement.

(iii) Open the first Saturday in June through April 15: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iv) Salmon open August 1 through January 31:

(A) From August 1 through October 31:

(I) Limit 6; only 4 adults may be retained.

(II) Release wild Chinook.

(B) From November 1 through January 31:

(I) Limit 6; only 4 adults may be retained and only two adults may be wild coho.

(II) Release wild Chinook.

(d) From the Highway 4 Bridge to the upstream entrance of the Naselle Hatchery Attraction Channel:

(i) Closed waters from the upstream entrance of the hatchery attraction channel downstream 300 feet.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) From August 16 through October 15: Bait or lure must be suspended below a float.

(iv) From August 16 through November 15:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(C) Barbless hooks are required.

(D) Stationary gear rules in effect.

~~((iv))~~ (v) Open the first Saturday in June through July 31 and September 16 through April 15: Release all fish, except mandatory retention of hatchery steelhead.

~~((iv))~~ (vi) Salmon open August 16 through January 31:

(A) From August 16 through September 15:

(I) Limit 6; only 2 adults may be retained.

(II) Release wild Chinook.

- (B) From September 16 through October 31:
 (I) Limit 6; only 4 adults may be retained.
 (II) Release wild Chinook.
- (C) From November 1 through January 31:
 (I) Limit 6; only 4 adults may be retained and only two may be wild (~~adult~~) coho.
 (II) Release wild Chinook.
- (e) From the upstream entrance of the Naselle Hatchery Attraction Channel to the Crown Mainline (Salme) Bridge:
 (i) The following areas are closed:
 (A) From the falls in Sec. 6, T10N, R8W (Wahkiakum Co.) downstream 400 feet.
 (B) Downstream of the full spanning concrete diversion structure at the Naselle Hatchery: Closed August 1 through October 15.
 (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 (iii) From August 1 through November 15:
 (A) Night closure in effect.
 (B) Anti-snagging rule applies.
 (C) Barbless hooks are required.
 (D) Stationary gear rules in effect.
 (iv) Open the first Saturday in June through April 15: Release all fish, except mandatory retention of hatchery steelhead.
 (v) Salmon open October 16 through January 31:
 (A) From October 16 through October 31:
 (I) Limit 6; only 4 adults may be retained.
 (II) Release wild Chinook.
 (B) From November 1 through January 31:
 (I) Limit 6; only 4 adults may be retained and only two may be wild (~~adult~~) coho.
 (II) Release wild Chinook.
- (f) From the Crown Mainline (Salme) Bridge to the mouth of the North Fork:
 (i) Open the first Saturday in June through April 15: Release all fish except anglers may retain up to 2 hatchery steelhead.
 (ii) From August 16 through November 30:
 (A) Night closure in effect.
 (B) Anti-snagging rule applies.
 (g) Upstream from the mouth of the North Fork:
 (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.
 (iii) Release all fish, except mandatory retention of hatchery steelhead.
- (118) **North Naselle River (Pacific County):**
 (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.
- (119) **South Naselle River (Pacific County):**
 (a) From the mouth to Bean Creek: Open the first Saturday in June through the last day in February.
 (b) From the first Saturday in June through August 15: Selective gear rules apply.
 (c) August 16 through November 30: Anti-snagging rule applies and night closure in effect.
 (d) Release all fish except anglers may retain up to 2 hatchery steelhead.
- (120) **Neil Creek (Grays Harbor County) (Wynoochee River tributary):**

- (a) Open from the mouth to USFS 22 Road from the first Saturday in June through October 31.
 (b) Selective gear rules apply.
- (121) **Newaukum River, including South Fork (Lewis County):**
 (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 (b) From the mouth to Leonard Road near Onalaska:
 (i) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
 (ii) August 16 through November 30:
 (A) Night closure in effect.
 (B) Single-point barbless hooks are required.
 (iii) Salmon open October ((+)) 16 through December 31:
 (A) Limit 6; only (~~one~~) two adults may be retained.
 (B) Only one wild coho may be retained.
 (C) Release Chinook(~~(-wild coho,))~~) and chum.
 (c) From Leonard Road near Onalaska to Highway 508 Bridge near Kearny Creek:
 (i) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
 (ii) August 16 through November 30:
 (A) Night closure in effect.
 (B) Single-point barbless hooks are required.
 (d) From Highway 508 Bridge upstream:
 (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.
 (iii) Trout: Catch and release only.
 (iv) August 16 through October 31: Night closure in effect.
- (122) **Newaukum River, Middle Fork (Lewis County), from the mouth to Tauscher Road Bridge:**
 (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 (b) Open the first Saturday in June to March 31.
 (c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length.
- (123) **Newaukum River, North Fork (Lewis County), from the mouth to 400 feet below the Chehalis city water intake:**
 (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 (b) Open the first Saturday in June through March 31.
 (c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length.
- (124) **Newman Creek (Grays Harbor County) (Chehalis River tributary):**
 (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.
- (125) **Newskah Creek (Grays Harbor County):**
 (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.

(126) **Niawiakum River (Pacific County):** From Highway 101 Bridge to the South Bend/Palix Road Bridge:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) August 16 through November 30:

(i) Night closure in effect.

(ii) Single-point barbless hooks are required.

(c) Open the first Saturday in June through November 30.

(d) Salmon open September 1 through November 30.

(i) Limit 6; only 2 adults may be retained.

(ii) Release wild Chinook.

(127) **North Nemah River (Pacific County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From Highway 101 Bridge upstream to the bridge on Nemah Valley Road:

(i) Open the first Saturday in June through March 31.

(ii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 1 through November 30:

(A) Night closure in effect.

(B) Stationary gear restriction applies.

(C) Single-point barbless hooks are required.

(iv) Salmon open August 1 through January 31.

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(c) From the bridge on Nemah Valley Road upstream to approximately 1.66 miles to the Hancock property line:

(i) Open the first Saturday in June through July 31 and November 16 through March 31.

(ii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(iv) Selective gear rules apply December 1 through March 31.

(d) From the Hancock property line upstream approximately 900 feet to Nemah Hatchery barrier dam:

(i) Closed from bridge at Nemah Hatchery upstream to Nemah Hatchery barrier dam, except open only for salmon for anglers that possess a senior's license (70 years old or older) from August 16 through November 15.

(ii) Open the first Saturday in June through July 31 and November 16 through March 31.

(iii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iv) From August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(v) Selective gear rules apply December 1 through March 31.

(vi) Salmon open only for anglers that possess a senior's license (70 years old or older) from August 16 through November 15.

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(e) From the Nemah Hatchery barrier dam upstream to N-700 Road:

(i) Open the first Saturday in June through March 31.

(ii) Release all game fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(iv) Selective gear rules apply from December 1 through March 31:

(v) Salmon open October 1 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(f) From the N-700 Road upstream to Cruiser Creek:

(i) Open the first Saturday in June through March 31.

(ii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(iv) Selective gear rules apply from December 1 through March 31.

(128) **North River (Grays Harbor/Pacific counties):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the Highway 105 Bridge to ~~((Salmon Creek (located approximately 2 miles upstream from Highway 101)))~~ Fall River:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Release all fish, except mandatory retention of hatchery steelhead.

(iii) Salmon open October 1 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(c) From Salmon Creek (located approximately 2 miles upstream from Highway 101) to Fall River:

(i) August 16 through November 30(~~(:~~

~~(A) Night closure in effect~~).

~~((B))~~ ~~(ii)~~ Anti-snagging rule applies.

~~((C) Single-point barbless hooks are required.~~

~~(ii) Open the first Saturday in June through the last day in February: Release all fish, except mandatory retention of hatchery steelhead.~~

~~(iii) Salmon open October 1 through January 31:~~

~~(A) Limit 6; only 4 adults may be retained.~~

~~(B) Release wild Chinook.)~~

(d) From Fall River to Raimie Creek:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Release all fish, except mandatory retention of hatchery steelhead.

(129) **Owens Pond (Pacific County):** The first Saturday in June through October 31 season.

(130) Palix River, including all forks (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the Highway 101 Bridge to the mouth of the Middle Fork:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Release all fish, except mandatory retention of hatchery steelhead.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; only 4 adults may be retained.

(C) Release wild Chinook.

(c) From the confluence with the Middle Fork upstream and all forks, including South Fork Palix and Canon rivers:

(i) August 16 through October 15:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(ii) From the first Saturday in June through August 15, and from December 16 through March 31: Selective gear rules apply.

(iii) Open the first Saturday in June through October 15, and from December 16 through March 31.

(iv) Release all fish, except mandatory retention of hatchery steelhead.

(131) Palmquist Creek (Clallam County), outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(132) **Peabody Creek (Clallam County):** Open the first Saturday in June through October 31 to juvenile anglers only.

(133) **Penny Creek (Jefferson County):** Open the first Saturday in June through October 31.

(134) **Petroleum Creek (Clallam County):** From the Olympic National Park boundary upstream:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(135) **Pheasant Lake (Jefferson County):** Open the fourth Saturday in April through October 31.

(136) **Pilchuck Creek (Clallam County) (Sooes River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(137) **Pioneer Creek (Grays Harbor County) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(138) **Pleasant Lake (Clallam County):** Trout: Kokanee minimum length 6 inches, maximum length 18 inches.

(139) **Porter Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(140) **Promised Land Pond (Grays Harbor County):** Open the first Saturday in June through October 31.

(141) **Pysht River (Clallam County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through January 31.

(c) Selective gear rules apply.

(d) From the first Saturday in June through October 31: Catch and release only.

(e) From November 1 through January 31: Trout minimum length 14 inches.

~~(142) ((Roek Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(143) Stearns Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(144) Stillman Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31 from the mouth to water supply pipeline at Mill Creek.~~

~~(b) Selective gear rules apply.~~

~~(145) Stowe Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(146)) Quigg Lake (Grays Harbor County):~~

~~(a) Open the first Saturday in June through April 15.~~

~~(b) Trout: Minimum length 14 inches.~~

~~(c) Salmon:~~

~~(i) Open October 1 through January 31.~~

~~(ii) Limit 6 hatchery coho salmon; only 4 may be adult hatchery coho.~~

~~((147)) (143) Quillayute River (Clallam County), outside of Olympic National Park:~~

~~(a) Open ((January)) July 1 through ((September 30 and November 16 through December 31)) June 30.~~

~~(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(c) Release wild (unclipped) rainbow trout.~~

~~(d) It is unlawful to use anything other than one barbless hook.~~

~~(e) Trout:~~

~~(i) From May 1 through the Friday before the first Saturday in June: Release all ((fish)) trout except anglers may retain up to 2 hatchery steelhead.~~

~~((#)) (ii) From the first Saturday in June through ((September 30 and November 16 through)) March 31: Trout minimum length 14 inches, except it is permissible to retain~~

hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((g))~~ ~~(iii)~~ From April 1 through April 30: Trout minimum length 14 inches.

~~((h))~~ ~~(iv)~~ From November ~~((16))~~ 1 through the last day in February: Anglers may retain one additional hatchery steelhead as part of the limit.

~~((i))~~ ~~(f)~~ Salmon: Open February 1 through ~~((September 30 and November 16 through))~~ November 30:

(i) From February 1 through August 31:

(A) Limit 6; only 2 adults may be retained.

(B) Release wild adult Chinook and wild adult coho.

(ii) From September 1 through ~~((September 30 and November 16 through))~~ November 30: ~~((A) Limit 2; only one may be a Chinook.~~

~~(B) Release wild coho)~~ Limit 6; only 3 adults may be retained, and only one of the adults may be wild.

~~((148))~~ **(144) Quinault River (Grays Harbor County):** From the mouth at the upper end of Quinault Lake upstream to the Olympic National Park boundary:

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Open the first Saturday in June through April 15.

(c) Release wild (unclipped) rainbow trout.

(d) It is unlawful to use anything other than one barbless hook.

(e) It is unlawful to use bait the first Saturday in June through September 30 and February 16 through April 15.

(f) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(g) Salmon open July 1 through November 30:

(i) From July 1 through September 30 limit 6 jack salmon only.

(ii) From October 1 through November 30:

(A) Limit 6; only 2 adults may be retained.

(B) Release sockeye and chum.

~~((149))~~ **(145) Quinn Creek (Clallam County), outside of Olympic National Park:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((150))~~ **(146) Radar Ponds (Pacific County):** Salmon: Landlocked salmon rules apply.

~~((151))~~ **(147) Raimie Creek and all forks (Pacific County) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((152))~~ **(148) Ripley Creek (Jefferson County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((153))~~ **(149) Rock Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((154))~~ **(150) Rock Creek (Lewis County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(151) Rocky Brook (Jefferson County) (Dosewallips River tributary): From the falls 1000 feet upstream of the mouth: Open the ~~((first Saturday in June))~~ the Saturday before Memorial Day through October 31.

~~((155))~~ **(152) Rue Creek, including West Fork (Pacific County) (South Fork Willapa tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((156))~~ **(153) Salmon Creek (Grays Harbor County) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((157))~~ **(154) Salmon Creek (Pacific County) (tributary of Naselle River):**

(a) Open the first Saturday in June through the last day in February.

(b) Selective gear rules apply.

(c) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((158))~~ **(155) Salmon River (Jefferson County), outside Olympic National Park and the Quinault Indian Reservation:**

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use anything other than one barbless hook.

(c) Release wild (unclipped) rainbow trout.

~~(d)~~ Open the first Saturday in June through September 30 and December 1 through the last day in February:

(i) It is unlawful to use bait the first Saturday in June through August 31.

(ii) ~~((Release wild (unclipped) rainbow trout.~~

~~((iii))~~ Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((iv))~~ ~~(iii)~~ It is permissible to retain steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

~~((d))~~ ~~(iv)~~ Salmon ~~((season))~~: Open September 1 through September 30:

~~((h))~~ ~~(A)~~ Limit ~~((2))~~ 6; only ~~((one))~~ 2 may be adults and only one of the adults may be a Chinook.

~~((i))~~ ~~(B)~~ Release wild coho.

~~((159))~~ **(156) Salt Creek (Clallam County):** From the mouth to the bridge on Highway 112:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through January 31.

(c) Selective gear rules apply.

(d) First Saturday in June through October 31: Catch and release only, except mandatory retention of hatchery steelhead.

(e) November 1 through January 31: Anglers may retain up to 2 hatchery steelhead.

~~((160))~~ (157) **Sand Creek (Grays Harbor County) (Chehalis River tributary):**

- (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.

~~((161))~~ (158) **Sandyshore Lake (Jefferson County):**
 Open the fourth Saturday in April through October 31.

~~((162))~~ (159) **Satsop Lakes (Grays Harbor County):**
 Open the fourth Saturday in April through October 31.

~~((163))~~ (160) **Satsop River and East Fork (Grays Harbor County):**

- (a) From the mouth to the bridge at Schafer State Park:
 (i) August 16 through November 30:
 (A) Night closure in effect.
 (B) Single-point barbless hooks are required.
 (ii) Open the first Saturday in June through March 31:

Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open (~~(September 16))~~ October 1 through ~~(December))~~ January 31:

- (A) From October 1 through December 31:
 (I) Limit 6; only ~~(one)~~ two adults may be retained.
~~((B))~~ (II) Only one wild coho may be retained.
 (III) Release (~~(wild adult))~~ Chinook (~~(and wild coho))~~).
 (B) From January 1 through January 31.
 (I) Limit 6; only two adults may be retained.
 (II) Release Chinook and wild coho.

(b) From the bridge at Schafer State Park upstream to 400 feet below Bingham Creek Hatchery barrier dam:

(i) Open the first Saturday in June through October 31:
 Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

- (ii) Open August 16 through October 31:
 (A) Night closure in effect.
 (B) Single-point barbless hooks are required.
 (c) From 400 feet downstream of the Bingham Creek Hatchery barrier dam upstream to the dam:

(i) Open within posted markers to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card.

- (ii) Night closure in effect.
 (iii) From August 16 through October 31: Single-point barbless hooks are required.

(iv) Open the first Saturday in June through March 31:
 Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(v) Salmon open (~~(September 16))~~ October 1 through ~~(December))~~ January 31:

- (A) From October 1 through December 31:
 (I) Limit 6; only ~~(one)~~ two adults may be retained.
~~((B))~~ (II) Only one wild coho may be retained.
 (III) Release (~~(wild adult))~~ Chinook (~~(and wild coho))~~).
 (B) From January 1 through January 31.
 (I) Limit 6; only two adults may be retained.
 (II) Release Chinook and wild coho.

- (d) From the Bingham Creek Hatchery dam upstream:
 (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.

(iii) August 16 through October 31: Night closure in effect.

~~((164))~~ (161) **Satsop River, Middle Fork (Turnow Branch):**

- (a) From the mouth to Cougar Smith Road:
 (i) From August 16 through November 30:
 (A) Anti-snagging rule applies.
 (B) Night closure in effect.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

- (b) From Cougar Smith Road upstream:
 (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.
 (iii) August 16 through October 31:
 (A) Night closure in effect.
 (B) Anti-snagging rule applies.

~~((165))~~ (162) **Satsop River, West Fork:**

- (a) From the mouth to Cougar Smith Road:
 (i) August 16 through November 30:
 (A) Anti-snagging rule applies.
 (B) Night closure in effect.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From Cougar Smith Road to USFS 2260 Road Bridge at Spoon Creek:

- (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.
 (iii) August 16 through October 31: Night closure in effect.

(c) From USFS 2260 Road Bridge at Spoon Creek upstream:

- (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.
 (iii) Eastern brook trout: No limit; no minimum size.

Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing.

~~((166))~~ (163) **Schafer Creek (Grays Harbor County) (Wynoochee River tributary):**

- (a) From the mouth to USFS 22 Road:
 (b) Open the first Saturday in June through October 31.
 (c) Selective gear rules apply.

~~((167))~~ (164) **Sekiu River (Clallam County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

- (b) From the mouth to the forks:
 (i) Open the first Saturday in June through January 31.
 (ii) From the first Saturday in June through October 31: Selective gear rules apply.

(iii) November 1 through January 31: Catch and release only, except mandatory retention of hatchery steelhead.

- (iv) Trout: Minimum length 14 inches.
 (c) From the forks upstream:
 (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.

(iii) Catch and release only, except mandatory hatchery steelhead retention applies.

~~((168))~~ **(165) Shine Creek (Jefferson County):**

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Catch and release only.

~~((169))~~ **(166) Shye Lake (Grays Harbor County):**
Open the first Saturday in June through October 31.

~~((170))~~ **(167) Siebert Creek (Clallam County):**

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Catch and release only.

~~((171))~~ **(168) Silent Lake (Jefferson County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((172))~~ **(169) Sitkum River (Clallam County) (Cala-wah River tributary):**

(a) Open the first Saturday in June through ~~(August)~~ October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) It is unlawful to use anything other than one barbless hook.

(d) Release wild (unclipped) rainbow trout.

(e) It is unlawful to use bait.

(f) Trout: ~~((+))~~ Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii))~~ Release wild (unclipped) rainbow trout.

~~(173))~~ **(170) Siwash Creek (Clallam County), outside of Olympic National Park:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((174))~~ **(171) Skookumchuck River (Thurston County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to 100 feet below the outlet of the TransAlta/WDFW steelhead rearing pond located at the base of the Skookumchuck Dam:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through April 30:

(A) From the first Saturday in June through March 31, trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 30: Trout minimum length 14 inches.

(iii) Salmon open October ~~((+))~~ 16 through December 31:

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild coho may be retained.

(C) Release Chinook(~~(wild coho,))~~) and chum.

(c) From Skookumchuck Reservoir upstream, selective gear rules apply.

~~((175))~~ **(172) Smith Creek (near North River) (Pacific County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the Highway 101 Bridge:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open October 1 through December 31:

(A) Limit 6; only 3 adults may be retained.

(B) Release wild Chinook.

(c) From the Highway 101 Bridge upstream:

(i) Selective gear rules apply.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((176))~~ **(173) Smith Creek (Pacific County) (Chehalis River tributary):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through October 31.

(c) Selective gear rules apply.

~~((177))~~ **(174) Snahapish River (Jefferson County) (Clearwater River tributary):**

(a) Open the first Saturday in June through ~~(August 31)~~ September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) It is unlawful to use anything other than one barbless hook.

(d) It is unlawful to use bait.

(e) ~~((Trout:~~

~~((+))~~ Release wild (unclipped) rainbow trout.

(f) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii))~~ Release wild (unclipped) rainbow trout.

~~(178))~~ **(175) Sol Duc River (Clallam County):**

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use anything other than one barbless hook.

(c) Release wild (unclipped) rainbow trout.

(d) ~~((From the mouth to the concrete pump station at the Sol Duc Hatchery: Open July 1 through September 30 and November 16 through June 30.))~~ Open July 1 through June 30.

(e) From the mouth to the concrete pump station at the Sol Duc Hatchery:

(i) It is unlawful to use bait July 1 through ~~((September 30))~~ August 31 and February 16 through April 30.

(ii) Trout:

(A) May 1 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((iii)) From the first Saturday in June through September 30 and November 16 through April 30:~~

~~(A))~~ (B) The first Saturday in June through ~~((September 30 and November 16 through))~~ March 31: ~~((Trout))~~ Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((B))~~ (C) April 1 through April 30: ~~((Trout))~~ Minimum length 14 inches.

~~((C)) November 16 through the last day in February:~~ Anglers may retain one additional hatchery steelhead as part of the trout limit.

~~(iv))~~ (ii) Salmon: Open February 1 through ~~((September 30 and November 16 through))~~ November 30:

(A) From February 1 through August 31:

(I) Limit 6; only 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From September 1 through ~~((September 30 and November 16 through))~~ November 30: Limit ~~((2))~~ 6; only ~~((one))~~ 3 may be ~~((a wild))~~ adults and only one adult may be wild. ~~((Release wild coho.~~

~~(e))~~ (f) From the concrete pump station at Sol Duc Hatchery to the Highway 101 Bridge upstream of Klahowya Campground:

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

(ii) It is unlawful to use bait.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((f))~~ (g) From the Highway 101 Bridge upstream of Klahowya Campground to the Olympic National Park boundary:

(i) Open the first Saturday in June through ~~((August))~~ October 31.

(ii) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(iii) It is unlawful to use bait.

~~((179))~~ (176) Solberg Creek (Clallam County) (Big River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((180))~~ (177) Solleks River (Jefferson County) (Clearwater River tributary):

(a) Open the first Saturday in June through ~~((August 31))~~ September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) It is unlawful to use anything other than one barbless hook.

(d) It is unlawful to use bait.

(e) ~~((Trout:))~~ Release wild (unclipped) rainbow trout.

~~((f))~~ (f) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii)) Release wild (unclipped) rainbow trout.~~

~~((181))~~ (178) Sooes River (Tsoo-Yess River) (Clallam County), outside of Makah Indian Reservation:

(a) Open the first Saturday in June through the last day in February.

(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

~~((b)) Open the first Saturday in June through the last day in February:))~~

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(d) From the first Saturday in June through October 31: ~~((f))~~ Selective gear rules apply.

~~((ii)) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~(d)) Open November 1 through the last day in February:~~ Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((182))~~ (179) South Bend Mill Pond (Pacific County): Open to juvenile anglers only.

~~((183))~~ (180) South Creek (Clallam County), outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((184))~~ (181) South Nemah River (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Lynn Point, 117 degrees true to opposite shore) to the confluence with Middle Nemah River:

(i) September 1 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31:

Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; only 4 adults may be retained.

(C) Release wild Chinook.

(c) From the confluence with the Middle Nemah River upstream to the second Highway 101 Bridge crossing:

(i) Open the first Saturday in June through March 31.

(ii) Selective gear rules apply.

(iii) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((185))~~ (182) Stearns Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(183) Stevens Creek (Grays Harbor County):

(a) From the mouth to the Highway 101 Bridge:

(i) Closed from the WDFW hatchery outlet downstream 400 feet.

(ii) Open the first Saturday in June through September 30 and December 1 through the last day in February.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From the Highway 101 Bridge upstream to the Newbury Creek Road Bridge:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(184) Stillman Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31 from the mouth to water supply pipeline at Mill Creek.

(b) Selective gear rules apply.

(185) Stowe Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(186) Sutherland Lake (Clallam County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: Minimum length 6 inches and maximum length 18 inches.

(187) Sylvia Creek (Grays Harbor County) (Wynoochee River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(188) **Sylvia Lake (Grays Harbor County):** It is unlawful to retain more than 2 trout over 15 inches in length.**(189) Tarboo Creek (Jefferson County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(190) Tarboo Lake (Jefferson County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(191) Teal Lake (Jefferson County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Selective gear rules apply.

(c) Trout: Limit one.

(192) Thorndyke Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(193) Thunder Creek (Clallam County) (Tributary to East Fork Dickey River):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use anything other than one barbless hook.

(c) It is unlawful to use bait.

(d) ~~((Trout:~~~~(i))~~ Release wild (unclipped) rainbow trout.(e) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~((ii) Release wild (unclipped) rainbow trout.~~~~((e))~~ ~~((f))~~ From mouth to D2400 Road: ((Game fish season)) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.~~((f))~~ (g) From D2400 Road upstream: Open the first Saturday in June through ~~((August))~~ October 31.**(194) Trap Creek (Pacific County) (Willapa River tributary):**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(195) Trout Creek (Clallam County) (Big River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(196) **Twin Lake (Jefferson County):** Open the fourth Saturday in April through October 31.**(197) Umbrella Creek (Clallam County), outside Olympic National Park, including tributaries:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(198) **Valley Creek (Clallam County):** Open the first Saturday in June through October 31 to juvenile anglers only.**(199) Vance Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(200) Vance Creek/Elma Ponds (Grays Harbor County), Pond One (Bowers Lake) and Pond Two (Lake Ines):

(a) Pond One/Bowers Lake is open only to juvenile anglers, seniors, and anglers with a disability who possess a designated harvester companion card.

(b) Open the fourth Saturday in April through November 30:

(i) Anglers may not retain more than 2 trout over 15 inches in length.

(ii) Landlocked salmon rules apply.

(201) Van Winkle Creek (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) August 16 through November 30:

(i) Night closure in effect.

(ii) Anti-snagging rule applies.

(c) From the mouth to 400 feet below the outlet of Lake Aberdeen Hatchery:

(i) Open the first Saturday in June through January 31: Trout minimum length 14 inches, except it is permissible to

retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Salmon open September 16 through January 31:

(A) From September 16 through December 31:

~~(I) Limit 6; only ((one)) two adults may be retained.~~

~~((B)) (II) Only one wild adult coho may be retained.~~

~~(III) Release adult Chinook ((and wild coho)).~~

(B) From January 1 through January 31.

(I) Limit 6; only two adults may be retained.

(II) Release Chinook and wild coho.

(d) From Lake Aberdeen upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(202) **Vesta Creek and all forks (Grays Harbor County) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(203) **Ward Creek (Pacific County) (Willapa River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(204) **Wentworth Lake (Clallam County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(205) **West Twin River (Clallam County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(206) **Wildcat Creek (Grays Harbor County) (Cloquallum Creek tributary):**

(a) Open from the mouth to the confluence of the Middle and East Forks from the first Saturday in June through October 31.

(b) Selective gear rules apply.

(207) **Wildcat Creek, East Fork (Grays Harbor County) (Cloquallum Creek tributary):**

(a) Open from the mouth to the Highway 108 Bridge (Simpson Avenue, in the town of McCleary) from the first Saturday in June through October 31.

(b) Selective gear rules apply.

(208) **Willapa River (Pacific County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (city of South Bend boat launch) to the Highway 6 Bridge approximately 2 miles below the mouth of Trap Creek:

(i) From August 1 through November 30:

(A) It is unlawful to fish from a floating device from the second bridge on Camp One Road upstream to the mouth of Mill Creek (approximately 0.5 miles).

(B) Night closure in effect.

(C) Single-point barbless hooks are required.

(D) Stationary gear restriction applies, except from the mouth of the Willapa River to the WDFW access site at the mouth of Ward/Wilson creeks.

(ii) From the City of South Bend boat launch upstream to the second bridge on Camp One Road: Anglers may fish with two poles August 1 through January 31, provided they possess a valid two-pole endorsement.

(iii) Open the first Saturday in June through March 31; release all fish except anglers may retain up to 2 hatchery steelhead.

(iv) Salmon open August 1 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(c) From Highway 6 Bridge to Fork Creek:

(i) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(C) Stationary gear restriction applies.

(ii) Open the first Saturday in June through July 15 and from ~~((August))~~ September 16 through March 31: Release all fish, except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open August 16 through September 15:

(A) Limit 6; only 2 adults may be retained.

(B) Release wild Chinook.

(iv) Salmon open September 16 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(d) From Fork Creek upstream to the Highway 6 Bridge near the town of Lebam:

(i) From August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through October 31:

Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open October 1 through January 31:

(A) Limit 6; only 4 adults may be retained and only two may be wild ~~((adult))~~ coho.

(B) Release wild Chinook.

(e) From the Highway 6 Bridge near the town of Lebam upstream:

(i) From August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through October 31:

Release all fish except anglers may retain up to 2 hatchery steelhead.

(209) **Willapa River, South Fork (Pacific County):** ~~((From the mouth to the bridge on Pehl Road:))~~

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the bridge on Pehl Road:

(i) From the falls/fish ladder downstream 400 feet in Section 6, Township 13 North, and Range 8 West: Closed.

~~((+))~~ (ii) Selective gear rules apply from the first Saturday in June through July 31.

~~((+))~~ (iii) From August 1 through November 30:

~~((+))~~ (A) Night closure in effect.

~~((+))~~ (B) Anti-snagging rule applies.

~~((+))~~ (C) Barbless hooks are required.

~~((+))~~ (c) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((+))~~ (i) Salmon open August 1 through January 31:

~~((+))~~ (ii) Limit 6; only 3 adults may be retained.

~~((+))~~ (iii) Release wild Chinook.

~~((+))~~ (d) From Pehl Road upstream:

(i) Open the first Saturday in June through the last day in February.

(ii) Release all fish except anglers may retain up to 2 hatchery steelhead.

(210) Williams Creek (Pacific County) (North Nemah River tributary):

(a) Open the first Saturday in June through October 15.

(b) Release all fish except anglers may retain up to two hatchery steelhead.

(211) Wilson Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(212) Wilson Creek, North Fork (Pacific County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(213) Wishkah River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From August 16 through November 30: Single-point barbless hooks are required.

(c) From the mouth to ~~((West Fork))~~ 200 feet below the weir at the Wishkah Rearing Ponds:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 1 through December 31:

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild adult coho may be retained.

(C) Release Chinook ((and wild coho)).

~~((d) From the mouth of West Fork to 200 feet below the weir at the Wishkah Rearing Ponds:~~

~~((i))~~ (iv) From 150 feet upstream to 150 feet downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Open only to anglers with disabilities who permanently use a wheelchair and have a designated harvester companion card.

~~((ii) Open the first Saturday in June through the last day in February.~~

~~((iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~((iv) Salmon open October 1 through December 31:~~

~~((A) Limit 6; only one adult may be retained.~~

~~((B) Release Chinook and wild coho.~~

~~((c))~~ (d) From the weir upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(214) Wishkah River, East and West forks (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(215) Wynoochee River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the WDFW White Bridge Access Site:

(i) From August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 1 through ~~((November 30))~~ December 31.

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild adult coho may be retained.

(C) Release Chinook ((and wild coho)).

(c) From the WDFW White Bridge Access Site to the 7400 line bridge:

(i) From August 16 through November 30: Single-point barbless hooks are required.

(ii) From September 16 through November 30: It is unlawful to use bait.

(iii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(d) From the 7400 line bridge to 400 feet below Wynoochee Dam, including the confluence of the reservoir upstream to Wynoochee Falls:

(i) Closed from 400 feet downstream of Wynoochee Dam and from the barrier dam near Gridale.

(ii) Open the first Saturday in June through October 31 and from December 1 through March 31:

(A) From the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From December 1 through March 31:

(I) Selective gear rules apply.

(II) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(e) From Wynoochee Falls upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Eastern brook trout: No limit. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing.

(216) Wynoochee Reservoir (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Trout: Minimum length 12 inches.

(c) Landlocked salmon rules apply.

WSR 17-19-009

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-230—Filed September 7, 2017, 10:30 a.m., effective October 8, 2017]

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

Purpose: Amends rules for ocean and coastal salmon fishing and includes WAC 220-313-070 Coastal salmon—Saltwater seasons and daily limits. The coastal saltwater rec-

recreational salmon fishing rules that are based on North of Falcon recommendations change from year to year to reflect current resource availability and to achieve conservation goals. Amendments to recreational salmon fishing rules are needed to implement the agreed-upon changes.

Citation of Rules Affected by this Order: Amending WAC 220-313-070.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 17-15-063 on July 13, 2017.

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 the Request of a Non-governmental 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 5, 2017.

J. W. Unsworth
Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-313-070 Coastal salmon—Saltwater seasons and daily limits. (1) It is unlawful to take, fish for, or possess salmon taken by angling for personal use except from the following coastal areas, during the following seasons, in the quantities and the sizes provided for in WAC 220-313-010, and for the species designated in this section. An area is open when a daily limit is provided:

(2) **Catch Record Card Area 1:**

(a) May 1 through June ~~((30))~~ 23: Closed.

(b) July ~~((+))~~ 24 through ~~((August 31))~~ September 4:

(i) Daily limit of 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(c) September ~~((+))~~ 5 through April 30: Closed.

(d) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-313-020.

(3) **Catch Record Card Area 2:**

(a) May 1 through June 30: Closed.

(b) July 1 through ~~((August 24))~~ September 4:

(i) Daily limit of ~~((one salmon))~~ 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(iii) Beginning August ~~((8))~~ 14, the Grays Harbor Control Zone is closed. Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18'N latitude, 124°07.01'W longitude) to Buoy #2

(46°52.42'N latitude, 124°12.42'W longitude) to Buoy #3 (46°55.00'N latitude, 124°14.48'W longitude) to the Grays Harbor north jetty (46°55.36'N latitude, 124°10.51'W longitude).

(c) ~~((August 22))~~ September 5 through April 30 - Closed.

(4) **Willapa Bay (Catch Record Card Area 2-1):**

(a) May 1 through June 30: Closed.

(b) July 1 through July 31: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(c) August 1 through January 31:

(i) Daily limit of 6 salmon; no more than ~~((4))~~ 3 may be adult salmon.

(ii) Release wild Chinook.

(iii) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(iv) Waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) then, northeasterly to the power transmission pole located at 46°43.19'N, 123°50.83'W are closed August 1 through September 30.

(d) February 1 through April 30: Closed.

(5) **Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**

(a) May 1 through July 31: Closed.

(b) August 1 through September ~~((24))~~ 15:

(i) Daily limit of 2 salmon.

(ii) Release wild Chinook and wild coho.

(iii) Waters south of a line running from the south end of the eastern jetty at Ocean Shores Marina to the fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) are closed.

(c) ~~((September 25 through September 30: Closed.~~

~~((October 1))~~ September 16 through November 30:

(i) Daily limit of ~~((+))~~ 2 salmon, of which one may be a wild coho.

(ii) Release ~~((wild))~~ Chinook.

(iii) Waters west of a line running from the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green) to the mouth of Johns River (Highway 105 Bridge) are closed.

~~((+))~~ (d) December 1 through April 30: Closed.

~~((+))~~ (e) Notwithstanding the provisions of this subsection, the Westport Boat Basin and Ocean Shores Boat Basin are open only August 16 through January 31:

(i) Daily limit of 6 salmon; no more than 4 may be adult salmon.

(ii) Release Chinook.

(iii) Night closure and anti-snagging rule in effect.

(6) **Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):**

(a) May 1 through June 30: Closed.

(b) July 1 through August ~~((7))~~ 13: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(c) August ~~((8))~~ 14 through April 30: Closed.

(7) **Catch Record Card Area 3:**

(a) May 1 through June ~~((30))~~ 23: Closed.

(b) ~~((July 1))~~ June 24 through ~~((August 24))~~ September 4:

- (i) Daily limit of 2 salmon.
- (ii) Release wild coho.
- ~~((iii) In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.)~~
- (c) (~~August 22~~) September 5 through April 30: Closed.
- (8) **Catch Record Card Area 4:**
- (a) May 1 through June (~~30~~) 23: Closed.
- (b) (~~July 1~~) June 24 through (~~August 24~~) September 4:
- (i) Daily limit of 2 salmon.
- (ii) Release wild coho.
- (iii) ~~((In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.~~
- ~~(iv))~~ Waters east of a true north-south line through Sail Rock are closed through July 31.
- ~~((v))~~ (iv) Waters east of the Bonilla-Tatoosh line closed to Chinook retention beginning August 1.
- ~~((vi))~~ (v) Release chum salmon beginning August 1.
- (c) (~~August 22~~) September 5 through April 30: Closed.
- (9) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

WSR 17-19-021**PERMANENT RULES****DEPARTMENT OF ECOLOGY**

[Order 15-15—Filed September 8, 2017, 10:15 a.m., effective October 9, 2017]

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

Purpose: This rule making amends chapter 173-312 WAC, Coordinated prevention grants, and repeals chapter 173-313 WAC, Local solid waste enforcement grant regulation. Both rules implement grant programs to local governments that support local solid waste planning, implementation, and enforcement activities. We are repealing chapter 173-313 WAC and incorporating its essential elements in the revised chapter 173-312 WAC. This rule making also changes the title of chapter 173-312 WAC to Local solid waste financial assistance.

Citation of Rules Affected by this Order: Repealing chapter 173-313 WAC, Local solid waste enforcement grant regulation; and amending chapter 173-312 WAC, Local solid waste financial assistance.

Statutory Authority for Adoption: RCW 70.95.130, 70.95.220, 70.105.235, 70.105D.030, 70.105D.070.

Adopted under notice filed as WSR 17-11-139 on May 24, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 173-312-020 Definitions (these changes were for clarification):

- Deleted "Contributed services."

- Under "In-kind interlocal," deleted the word "local" in the first sentence.
- Under "Local contribution," replaced "contributed services" with "in-kind interlocal."

WAC 173-312-060 Application process (this change was for clarification):

- Under subsection (3), replaced "contributed services" with "in-kind interlocal."

WAC 173-312-070 Application evaluation (these changes were in response to stakeholder concerns about establishing criteria in guidelines):

- Subsection (2)(b) was revised to read, "The extent to which projects proposed in the application serve statutory priorities or priorities identified in the local solid and/or hazardous waste plans;"
- Deleted subsection [(2)](e) referring to other criteria in guidelines.

WAC 173-312-080 Allocation of state financial assistance (these changes were in response to stakeholder concerns about criteria, and the need to be flexible in reducing awards. We also added language to provide a stakeholder opportunity to ask the agency for reconsideration of an award reduction):

- The reference in subsection (3) to developing criteria for performance evaluation was revised to read, "If a recipient fails to comply with the terms of its award or administrative requirements, the department may reduce their award in the next biennium by up to ten percent for failure to meet performance expectations. The department will make this determination after receiving applications in the next biennium. A recipient may request the department's reconsideration within seven calendar days of the award reduction notification and must submit the request in writing detailing the reasons for the request."

WAC 173-312-090 Local contribution (this change was for clarification):

- Subsection (2) The local contribution may be met by cash expenditures and in-kind interlocal. The applicant's intent to use in-kind interlocal must be stated in the application. The department will confirm the costs meet department requirements, and prepare the agreement to reflect the local contribution prior to offering the agreement.

A final cost-benefit analysis is available by contacting Department of Ecology, Waste 2 Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6900, fax 360-407-6102, TTY 877-833-6341, email w2rpubs@ey.wa.gov [w2rpubs@ecy.wa.gov], web site <http://www.ecy.wa.gov/programs/swfa/rules/ruleDev.html>.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 5.

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 10, Repealed 5.

Date Adopted: September 8, 2017.

Maia D. Bellon
Director

Chapter 173-312 WAC

~~((COORDINATED PREVENTION GRANTS))~~ LOCAL SOLID WASTE FINANCIAL ASSISTANCE

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-010 Purpose and authority. (1) The purpose of this chapter is to:

(a) Set forth requirements for ~~((the conduct of a))~~ financial assistance ~~((program to))~~ under the Model Toxics Control Act, RCW 70.105D.070(3).

(b) Provide ~~((grants to local governments for))~~ financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW.

Programs include local hazardous waste ~~((plans and programs and solid waste plans and programs, under the Model Toxics Control Act, RCW 70.105D.070(3). The plans and programs referenced in RCW 70.105D.070(3)))~~ planning and implementation, local solid waste planning and implementation, and enforcement of rules and regulations governing solid waste handling. Planning, implementation, and enforcement are designed to prevent or minimize environmental contamination ~~((Therefore, the grants are designated "coordinated prevention grants" under this chapter))~~ resulting from improper management or disposal of waste.

(2) A further purpose of this chapter is to establish a structure for the administration of ~~((coordinated prevention grants))~~ local solid waste financial assistance funded from the local toxics control accounts authorized by RCW 82.21.030. The administrative structure may be extended to other waste management ~~((grant))~~ financial assistance programs using other funding sources ~~((including the litter control account authorized by chapter 70.93 RCW, the hazardous waste assistance account authorized by chapter 70.95E RCW, and other waste management funding sources that may be established in the future by the legislature)).~~

(3) The purposes of ~~((the coordinated prevention grants program))~~ local solid waste financial assistance are to:

(a) ~~((Consolidate all grant programs funded from the local toxics control account, and other programs in subsection (2) of this section that may be selected, into a single program, except for remedial action, public participation, and citizen proponent negotiations grants.~~

~~((b)))~~ Promote regional solutions and intergovernmental cooperation for efficient implementation of programs and eligible projects under this chapter.

~~((c))~~ (b) Prevent or minimize environmental contamination by providing financial assistance to local governments to help them comply with state and local solid and hazardous waste laws and rules.

~~((d))~~ (c) Provide ~~((funding))~~ financial assistance for local solid and hazardous waste planning, and for implementation of ~~((some))~~ eligible programs and projects in those plans.

~~((e))~~ (d) Provide for the enforcement of rules and regulations promulgated under chapter 70.95 RCW.

(e) Encourage local responsibility for solid and hazardous waste management.

(f) Improve efficiency, consistency, reliability, and accountability ~~((of grant))~~ for administration of local solid waste financial assistance.

Note: Copies of all cited statutes, rules, and guidelines are available at the Department of Ecology, Records Management, P.O. Box 47600, Olympia, Washington 98504-7600.

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-020 Definitions. "Cash expenditure" means any cash outlay by the recipient ~~((regardless of the source of funds, for direct))~~ for project-eligible costs. Expenditures may include direct costs of goods ~~((and/or))~~ and services; recipient salaries and benefits ~~((of recipient employees, including force account));~~ overhead ~~((cash));~~ and payments made to contractors.

"Conditionally exempt small quantity generator (CESQG)" means a dangerous waste generator whose dangerous wastes are not subject to regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-070 (8)(b).

"Coordination" means notification by the local government (with primary responsibility for maintaining the local solid waste plan) that financial assistance is available for solid and hazardous waste planning and implementation. Notification must be provided to local solid waste plan signatories and the local government that is required by chapter 70.105 RCW to adopt the local hazardous waste plan. Coordination also includes consultation between local governments where the partnering local government requests financial assistance through a primary responsible local government for the purposes of determining its project eligibility and a budget.

"Department" means the Washington state department of ecology.

("Grant" means the portion of the project costs borne by the department.

"In-kind contributions" are property or services that benefit a project and that are contributed by a third party, without direct monetary compensation, to the recipient (or to any contractor under the agreement). In-kind contributions include donated or loaned real or personal property, volunteer ser-

ices, and employee services donated by a third party.) "Disposal site" means a facility where final disposal of solid waste occurs, including a transfer station, but not a drop box facility.

"Eligible applicant" means a local government with primary responsibility for maintaining the department-approved local solid waste plan, or a partnering local government that complies with coordination requirements, or a jurisdictional health department authorized to adopt the local solid waste ordinance.

"Household hazardous waste (HHW)" means any waste that exhibits any of the properties of dangerous wastes and is exempt from regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated by households. Household hazardous waste can also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70.105 RCW, Hazardous waste management.

"Incineration" means a process of reducing the volume of solid waste by use of an enclosed device using controlled flame combustion, operating under federal and state environmental laws and rules.

"Independent city" means a city that has a department-approved local solid waste plan, used a solid waste advisory committee (SWAC) or a SWAC-like entity to develop the plan, and can provide for solid waste disposal sites wholly within its jurisdiction.

"In-kind interlocal ((costs)) ((are))" means in-kind contributions made to a project by another ((local)) government under a valid written agreement between the recipient and the other government that details the work to be accomplished, the goods and services to be provided, and the value thereof. If the recipient reimburses another governmental entity for any portion of its contributions, the amount paid to the other entity is not an interlocal cost. It is a cash expenditure on the part of the recipient. Only the nonreimbursed portion of the other governmental entity's contributions is an interlocal cost.

"Jurisdiction" means a particular geographic area containing a defined legal authority, such as the boundary lines of a county or city.

"Jurisdictional health department" means city, county, city-county, or district public health department.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land ~~((and which is not a landspreading disposal facility.~~

"Lead implementation agency" means the agency designated in the adopted local solid or hazardous waste plan as having the principal responsibility for the execution of all or most of the plan, and/or the coordinating agency that delegates responsibility to other agencies to execute portions of the plan)) including facilities that use solid waste as a component of fill.

"Local contribution" means the required portion of project-eligible costs borne by the recipient as cash expenditures or in-kind interlocal.

"Local government" means any political subdivision, regional governmental unit, solid waste disposal district, municipal or public corporation, ~~((including))~~ and includes cities, towns, and counties. The term encompasses but does

not refer specifically to the departments within a city, town, or county.

"Local hazardous waste plan" means the plan to manage moderate-risk waste that a local government is required to prepare under RCW 70.105.220.

~~((("Match" means that portion of the cash expenditures borne by recipient funds and interlocal costs.~~

~~"Moderate risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under chapter 70.105 RCW solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes that are generated from the disposal of substances identified by the department as hazardous household substances or substances that exhibit any of the properties of hazardous waste-))~~ "Moderate risk waste (MRW)" means solid waste that is limited to conditionally exempt small quantity generator (CESQG) waste, and household hazardous waste (HHW).

"Partnering local government" means a local government that does not have the primary responsibility for maintaining the local solid waste plan, and may become an eligible applicant for solid and hazardous waste planning and implementation financial assistance through coordination with a primary responsible local government.

"Population" means the most recent United States census data accepted by the department or official estimates provided by the state office of financial management.

"Recipient" means the ~~((entity))~~ applicant to which the funding is awarded and that is accountable for the use of the funds provided. The recipient is the entire legal entity even if only one component or department is designated in the agreement document.

"Recyclable materials" means those solid wastes separated for recycling or reuse, ~~((such as papers, metals and glass, that))~~ and are identified as recyclable material under a local ~~((comprehensive))~~ solid waste plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration or recycling as defined in chapter 173-350 WAC.

"Retroactive costs" means project-eligible costs incurred between the effective start date of the agreement and before the department signature date on the agreement.

"Solid waste" or "wastes" means all putrescible and non-putrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

"Solid waste advisory committee (SWAC)" means the local committee as described in and required by RCW 70.95.165; and the SWAC-like entity required by the department for independent cities requesting financial assistance. The SWAC or SWAC-like entity must actively assist and participate in development of a new plan, and the development or maintenance of existing plans in order to meet financial assistance eligibility requirements under this chapter.

"Solid waste handling" means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy

resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.

"Total eligible cost" means an amount not to exceed the sum of the state assistance funding level plus the local contribution of twenty-five percent.

AMENDATORY SECTION (Amending WSR 00-19-016, filed 9/8/00, effective 10/9/00)

WAC 173-312-030 Relation to other legislation and administrative rules. (1) This rule ~~((shall, together with chapters 173-322 and 173-321 WAC, and WAC 173-303-902,))~~ fulfills the requirement for rule making set forth in RCW 70.105D.070~~((7))~~ (8).

(2) ~~((The))~~ A local government receiving ~~((a grant))~~ financial assistance shall comply fully with all applicable federal, state, and local laws, orders, rules, and permits.

(3) ~~((Grants))~~ Financial assistance will be awarded within the limits of available funds. The ~~((obligation))~~ policy of the department to ~~((make grant payments))~~ reimburse eligible costs incurred by the recipient through the effective date of termination or suspension of the agreement, is contingent upon the availability of funds through legislative appropriation and allotment, and other conditions not reasonably foreseeable by the department, which may render performance impossible.

(4) Nothing in this chapter may influence, affect, or modify existing department programs, rules, or enforcement of applicable laws relating to solid ~~((and))~~ or hazardous waste management ~~((and))~~ or cleanup.

(5) All ~~((grants))~~ recipients of financial assistance are subject to ~~((existing))~~ applicable accounting and auditing requirements of state laws and rules.

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-040 Applicant eligibility for financial assistance. (1) ~~((Eligibility for))~~ (a) Local solid waste planning ~~((grants. Counties that are required by chapter 70.95 RCW to adopt or update local solid waste plans are eligible to apply for coordinated prevention grants to help pay for those plans. This eligibility extends to cities that have submitted an independent city plan, a joint city plan, or joint city-county plan to the department by the effective date of this rule. This))~~ and implementation. A local government with a department-approved solid waste plan that was developed using a solid waste advisory committee (SWAC) as defined in WAC 173-312-020, that has the primary responsibility for maintaining that plan, is eligible to apply for financial assistance to help maintain the plan. An independent city qualifying as an eligible applicant under this subsection must provide for disposal site(s) wholly within its jurisdiction. Eligibility also extends for financial assistance to help pay for the implementation of projects identified in the plan, if those projects are eligible as defined in WAC 173-312-050.

(b) Eligibility ~~((also))~~ for planning financial assistance may extend ~~((s))~~ to ~~((any))~~ a city ~~((subsequently))~~ preparing to become independent and requesting ~~((funding for the preparation of an))~~ financial assistance to write its initial independent plan, ((#)) when the city:

(i) Provides for disposal sites wholly within its jurisdiction; and

(ii) Uses a solid waste advisory committee (SWAC) as defined in WAC 173-312-020; and

(iii) Complies with coordination requirements in WAC 173-312-060 (5)(b).

(2) ~~((Eligibility for))~~ Local solid waste enforcement ~~((grants)).~~ Jurisdictional health ~~((departments/districts))~~ departments that have adopted or are in the process of adopting a solid waste ordinance (as authorized under RCW 70.95.160 that at minimum meets chapter 173-350 WAC requirements) are eligible to apply for ~~((coordinated prevention grants))~~ financial assistance to help pay for the enforcement of local ordinance(s) and rules and regulations adopted under chapter 70.95 RCW.

(3) ~~((Eligibility for solid waste implementation grants. Counties whose solid waste plans are adopted and approved by the department as required by chapter 70.95 RCW are eligible to apply for coordinated prevention grants to help pay for the implementation of waste reduction and recycling projects in the most recently approved and adopted plan. Provided, That those projects are eligible as defined in WAC 173-312-050. This eligibility also extends to cities that are eligible for funding to do local solid waste plans or updates as provided by subsection (1) of this section.~~

If the adopted plans designate lead implementation agencies to implement the plans, those agencies are also eligible to apply for coordinated prevention grants.

(4) ~~((Eligibility for))~~ Local hazardous waste planning ~~((grants))~~ and implementation. A local government ~~((s))~~ with a department-approved hazardous waste plan, and that ~~((are))~~ is required by chapter 70.105 RCW to adopt ~~((or update))~~ the local hazardous waste plan~~((s are))~~, and that complies with coordination requirements as described in WAC 173-312-060 (5)(b) is eligible to apply for ~~((coordinated prevention grants))~~ financial assistance to help ~~((pay for those plans.~~

(5) Eligibility for hazardous waste plan implementation grants. Local governments with department-approved local hazardous waste plans as required by chapter 70.105 RCW are eligible to apply for coordinated prevention grants to help pay for the implementation of projects in the plan. If the plans designate lead implementation agencies to implement the plans, those agencies are also eligible to apply for coordinated prevention grants.

(6) Any grant-eligible entities as defined in this section may submit their requests in a coordinated application as described in WAC 173-312-060 (4)(a), or may submit separate applications as provided in WAC 173-312-060 (4)(b)) maintain the plan. Eligibility also extends for financial assistance to help pay for the implementation of projects identified in the plan, if those projects are eligible as defined in WAC 173-312-050.

(4) **Partnering local government.** Eligibility for planning and implementation financial assistance may extend to a partnering local government when it complies with coordination requirements in WAC 173-312-060 (5)(b).

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-050 Project and cost eligibility. (1) ~~((Eligible project costs are those costs which are necessary and reasonable to fund required local planning and the implementation of some projects and programs contained in those plans, including innovative approaches implementing policies of the plan. These are:))~~ Financial assistance reserved for local solid waste planning and implementation will be used to develop or maintain the department-approved local solid or hazardous waste management plan, and for eligible programs contained in those plans.

(2) Financial assistance reserved for local solid waste enforcement programs will be used to enforce rules and regulations adopted under chapter 70.95 RCW, and must provide for an outcome that is measurable. Programs include, but are not limited to:

(a) Develop and maintain local regulations or ordinances governing solid waste handling.

(b) Enforce locally adopted regulations or ordinances governing solid waste handling.

(c) Enforce state minimum functional standards as set forth in chapters 173-350, 173-351, and 173-304 WAC.

(d) Inspect and authorize the disposal of abandoned junk vehicles in accordance with RCW 70.95.240.

(e) Investigate illegal dumping of solid waste (provided that the enforcing authority takes reasonable action to determine and identify the person responsible for illegally dumping solid wastes).

(3) The department will consider eligible solid waste programs in the following descending order:

(a) Local hazardous waste ((planning as required by chapter 70.105 RCW.

(b) Local solid waste planning as required by chapter 70.95 RCW.

(c) Local hazardous waste plan implementation projects.

(d) Local solid waste enforcement by the jurisdictional health departments and districts.

(e) Local solid waste plan implementation projects, which are limited to waste reduction and recycling projects and programs.

(2) Eligible)) plans and programs that:

(i) Develop or maintain the local hazardous waste management plan.

(ii) Manage household hazardous wastes that are generated or otherwise present within the jurisdiction.

(iii) Provide for ongoing public involvement and public education in regard to the management of moderate risk waste to include information as identified under RCW 70.105.220 (1)(b).

(iv) Provide for an outcome that is measurable.

(b) Local solid waste plans and programs that:

(i) Develop or maintain the local solid waste management plan.

(ii) Reduce waste and recycle.

(iii) Address local need (provided proposed expenditures meet eligible cost criteria).

(iv) Provide for an outcome that is measurable.

(4) Projects or related costs ((~~do~~)) that are not eligible include:

(a) Solid waste incinerator feasibility studies, construction, maintenance, or operation.

(b) New landfill construction or landfill expansion, or landfill upgrading at an operating facility to meet the requirements of chapters 173-350 and 173-351 WAC.

(c) Landfill closure as required by chapters 173-350 and 173-351 WAC.

(d) Garbage collection and disposal, except start up and operational costs for waste reduction and recycling programs.

(e) Solid and hazardous waste expenses not directly related to compliance with state solid and hazardous waste laws and rules.

(f) Projects designed to address restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(g) High performance buildings.

(h) Natural disasters where there is no hazardous substance contamination.

(i) Costs associated with biosolids managed under chapter 173-308 WAC including feasibility studies, trainings, compliance and monitoring.

(5) The department will review applications and evaluate projects, as defined in WAC 173-312-070, and as further described in guidelines.

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-060 Application process. (1) The department will provide an application and establish a process for requesting local solid waste financial assistance under this chapter.

(2)(a) The department ((shall set forth in its grant guidelines the base funding levels estimated to be available for each county for coordinated prevention grants and the process by which applications will be submitted.

(2) The application must be submitted by the county agency or department having responsibility for solid waste, unless the county executive department selects another agency or department to submit the application.

(3) Coordinated prevention grant applications must:

(a) Include a commitment by the applicants to use local funds to match grant funds according to the requirements of WAC 173-312-090.

(b) Be for eligible projects as defined in WAC 173-312-050.

(c) Include a scope of work that is sufficiently detailed for the department to monitor grant performance.

(d) Include documentation that all cities in the county and lead implementation agencies that have approved the adopted local hazardous waste plan or solid waste plan have had the opportunity to request that projects that meet the requirements of WAC 173-312-050 be included in the application.

(4) To obtain coordinated prevention grant funding, a county shall submit an application, as defined herein:

(a) A coordinated grant application means that the county, the health department or district and any other grant eligible entities as defined in WAC 173-312-040 have

reached agreement regarding the requested projects and funding allocations for both local solid and local hazardous waste plans and projects. Coordinated applications will receive financial incentives for administrative coordination set forth in WAC 173-312-080.

The coordinated application shall include a maximum grant request for no more than the base funding level for the county, plus the financial incentive.

(b) In the event a county fails to submit a coordinated application, indicating grant eligible entities have not reached agreement regarding projects and funding allocations, they will lose the incentive as set forth in WAC 173-312-080. This money shall be made available for supplemental funding as specified in WAC 173-312-080.

(5) The application must be signed, indicating approval by responsible officials from the county, local health department or district and any other grant eligible entities as defined in WAC 173-312-040)) will estimate available funding levels for eligible applicants defined in WAC 173-312-040 (1) and (2). These estimates will be provided by the start of the initial application period in each biennium.

(b) Initial awards will be based on the final funding level approved by the department.

(3) An applicant must request an amount not to exceed the sum of its estimated state assistance funding level plus the local contribution of twenty-five percent identified as cash or in-kind interlocal.

(4) The department will only consider applications submitted by eligible applicants. Applications must provide sufficient detail for the department to determine project and cost eligibility.

(5) Each applicant must comply with the coordination requirements as described for the applicant:

(a) Eligible applicants, as defined in WAC 173-312-040(1), must notify signatories to its local solid waste plan and the local government that is required by chapter 70.105 RCW to adopt the local hazardous waste plan that financial assistance is available. The applicant must complete the coordination form provided by the department.

(b) Eligible applicants, as defined in WAC 173-312-040, excluding subsection (1) and (2) of that section, must coordinate with the local government (with primary responsibility for maintaining the local solid waste plan) to determine an amount it is allowed to request, and for the responsible authority to verify that the proposed projects or programs are contained in the local plan. The applicant and primary responsible local government must complete the coordination form provided by the department.

(c) Eligible applicants, as defined in WAC 173-312-040(2), are exempt from coordination requirements.

(6) The department may redirect funds to another applicant when the initial applicant does not return a signed agreement within four months of the department's official offer.

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-070 Application evaluation. ~~((+))~~ In evaluating coordinated prevention grant applications, the department may require that funding of certain projects take

precedence over other projects. The department will refer to the following priority order in evaluating projects:

(a) Required hazardous waste planning under chapter 70.105 RCW and required solid waste planning under chapter 70.95 RCW.

(b) Programs and projects to implement adopted local hazardous waste plans, including waste reduction and recycling.

(c) Solid waste enforcement programs.

(d) Programs and projects to implement adopted local solid waste plans, including waste reduction and recycling.

(2) The department will evaluate each application according to the extent to which it:

(a) Conforms to the adopted local hazardous waste and solid waste plans.

(b) Advances regional solutions and intergovernmental cooperation.

(c) Supports the state's goal to achieve a fifty percent recycling rate.

(d) Confers broad benefit on residents of the county, whether they reside in incorporated areas or unincorporated areas.

(e) Meets the needs of local government for projects that prevent environmental contamination from solid and hazardous waste.

(f) Uses the state's resources efficiently.

(g) For solid waste enforcement funding, takes into account the number of disposal sites and the geographic area requiring enforcement activity.

(3) The department may fund all or portions of a coordinated prevention grant application.

(4) The department may award grants to any local government in order to execute all or portions of a coordinated prevention grant program.) (1) The department will perform an initial review of an application for local solid waste financial assistance to determine:

(a) The applicant is eligible for financial assistance as defined in WAC 173-312-040.

(b) The applicant complied with coordination requirements as described in WAC 173-312-060.

(c) Projects in the application are eligible as defined in WAC 173-312-050.

(d) The application is complete.

(2) The department will further evaluate each application and may fund all or portions of an application according to:

(a) Funding availability;

(b) The extent to which projects proposed in the application serve statutory priorities or priorities identified in the local solid and/or hazardous waste plans;

(c) Applicant past performance; and

(d) Sufficient detail in the application for the department to determine eligibility.

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-080 Allocation of ((grant funding)) state financial assistance. (1) The department ((shall)) will consider the following factors ((in)) when calculating ((base funding levels, supplemental grant levels, and grant amounts

for recipients)) amounts available for initial applications for local solid waste financial assistance:

(a) Projected and actual ((revenue to)) state funds from the local toxics control accounts((, and other funding sources cited in WAC 173-312-010(2), as determined by the department)).

(b) ((The number of people served by a local government.)) Other funds as identified by the department.

(2) ((Grants that may be awarded to eligible cities under WAC 173-312-040 may not exceed a city's proportionate share, based on population, of a county's base funding level as defined in subsection (3)(a) of this section, unless the department, the county, the health department or district and the grant eligible entities as defined in WAC 173-312-040 agree otherwise.

(3) Projected revenues to the local toxics control account that are)) A portion of the total allocation available each biennium for ((coordinated prevention grant purposes must be divided into two portions, one for solid waste enforcement grants, and one for solid and hazardous waste implementation grants.)) local solid waste financial assistance is reserved for eligible projects or programs defined in WAC 173-312-050(2). The remaining portion is reserved for eligible projects or programs defined in WAC 173-312-050 (1) and (3). The department will calculate allocations ((will be calculated)) as follows:

(a) The amount set aside for solid waste enforcement ((grants, an amount sufficient to provide each single-county jurisdictional health department with one hundred thousand dollars and each multicounty jurisdictional health department with one hundred fifty thousand dollars will be set aside. In future biennia the amount set aside for solid waste enforcement will be twenty percent of the total coordinated prevention grant allocation, and the single-county and multicounty solid waste enforcement grant allocation will be increased or decreased proportionately.

(b) For solid and hazardous waste implementation grants, the remaining eighty percent is divided among counties by means of a formula that shall consist of two elements)) will be not less than twenty percent of the total allocation available each biennium for local solid waste financial assistance or an amount equal to the total sum of seventy-five thousand dollars per county, whichever is greater. Financial assistance reserved for local solid waste enforcement will be calculated as follows:

(i) A fixed amount for each jurisdictional health department.

(ii) A per capita amount based on population.

(b) Financial assistance reserved for local solid and hazardous waste planning and implementation will be calculated as follows:

(i) A fixed amount for each county, regardless of size((;)), and as determined by the department. An independent city that qualifies as an eligible applicant under WAC 173-312-040(1) is excluded.

(ii) A per capita amount based on the county percentage of state population ((size as determined by the United States census data or by the official estimates of the state office of financial management.

(e) Counties that submit a coordinated application as defined in WAC 173-312-060 shall receive a ten percent increase if base level funding as defined in (b) of this subsection is an incentive.

(d) After initial grant amounts have been determined for both categories of coordinated prevention grants based upon the applications, the unallocated funds shall become supplemental funds used to promote strategic initiatives that meet needs defined by the state solid waste planning process. Supplemental funds for solid and hazardous waste implementation grants will first be awarded within the initial solid and hazardous waste implementation coordinated prevention grant portion. Supplemental funds for solid waste enforcement grants will first be awarded within the initial solid waste enforcement coordinated prevention grant portion. Only when supplemental funds still remain in either category after the initial supplemental awards have been given shall the funds be awarded to the other portion.

(4) Applicants must meet the requirements of this chapter to the satisfaction of the department in order to secure grant awards)) or the independent city percentage of the county population.

(A) An independent city that qualifies as an eligible applicant under WAC 173-312-040(1) is included in this element of the calculation to the extent the population of its home county is reduced by the same amount.

(B) Financial assistance awarded to independent cities may exceed a city's proportionate share under (b)(ii)(A) of this subsection if the department, the county, and all other signatories to the local solid waste management plan agree.

(3) If a recipient fails to comply with the terms of its award or administrative requirements, the department may reduce their award in the next biennium by up to ten percent for failure to meet performance expectations. The department will make this determination after receiving applications in the next biennium. A recipient may request the department's reconsideration within seven calendar days of the award reduction notification and must submit the request in writing detailing the reasons for the request.

(4) Any funds remaining after all initial applications are considered will be distributed based on need, using the following criteria as a primary determinant:

(a) Funds remaining from the local solid and hazardous waste planning and implementation portion are first offered to other solid and hazardous waste planning and implementation applicants.

(b) Funds remaining from the solid waste enforcement portion are first offered to other solid waste enforcement applicants.

(5) The department will monitor spending throughout the biennium and will work with recipients to adjust budgets as necessary. Deobligated funds will be redistributed in the same biennium according to need, and based on projects in current agreements, and performance in the current biennium.

(6) Subsequent opportunities to apply for local solid waste financial assistance will be announced by the department.

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-090 ~~((State assistance share and))~~ **Local ((cash match)) contribution.** (1) ~~((Costs eligible under WAC 173-312-050 will be considered for grant funding at a level of seventy-five percent. Twenty-five percent of eligible costs must be provided as local cash match.~~

~~((2) Local cash match))~~ The required local contribution is twenty-five percent of project-eligible costs.

(2) The local contribution may be met by cash expenditures and in-kind interlocal ((costs. Interlocal costs are the only type of in-kind contributions that may be used for local cash match)). The applicant's intent to use in-kind interlocal must be stated in the application. The department will confirm the costs meet department requirements, and prepare the agreement to reflect the local contribution prior to offering the agreement.

AMENDATORY SECTION (Amending WSR 02-05-070, filed 2/19/02, effective 3/22/02)

WAC 173-312-100 ~~((Grant))~~ **Program administration.** (1) The department ~~((shall))~~ will prepare guidelines to facilitate understanding and compliance with ~~((and interpretation of))~~ this rule.

~~((2) ((Coordinated prevention grants shall operate on a biennial funding cycle. Applications will be due in the first quarter of the biennium. Eligible applicant governments will apply for grant funds up to the base funding level set forth in WAC 173-312-080 plus the incentive, and at the same time shall submit requests for additional funds to assist ongoing or new projects. Supplemental funds, if awarded, shall be supplied as part of the new grant. New grants will begin in the third quarter of the biennium, and will run for two calendar years.~~

~~((3) The department will obligate coordinated prevention grant funds to a recipient))~~ All agreements under this chapter must comply with the department's administrative requirements for financial assistance, and department guidelines for local solid waste financial assistance that may be more stringent.

(3) Financial assistance will be obligated for a maximum period of two years and align with the state fiscal biennium. ((If the recipient has not accomplished the scope of work in the time period set forth in the agreement, the recipient must use a portion of its next biennial base funding level to complete the project(s).

~~((4) No))~~

(a) Costs incurred ((before)) outside of the agreement effective dates ((of a grant agreement)) are not eligible ((unless specific provision is made in the grant agreement for those costs)) for reimbursement.

~~((5))~~ All grants under this chapter must be consistent with Administrative Requirements for Ecology Grants and Loans WDOE #91-18 (Revised October 2000).)) (b)(i) Retroactive costs are eligible for reimbursement as provided under this chapter.

(ii) A recipient's request for reimbursement of retroactive costs must be submitted to the department within ninety days of the department signature date on the agreement.

Requests submitted later than ninety days may be denied by the department. The request must include adequate documentation for the department to determine eligibility.

WSR 17-19-026

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2017-02—Filed September 11, 2017, 9:47 a.m., effective October 12, 2017]

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

Purpose: Amend or repeal obsolete statutory citations to domestic insurer investments.

Citation of Rules Affected by this Order: Repealing WAC 284-16-100 and 284-16-110; and amending WAC 284-13-280 and 284-44-330.

Statutory Authority for Adoption: RCW 48.02.060 and 48.13.171(1).

Other Authority: Chapter 48.13 RCW.

Adopted under notice filed as WSR 17-16-161 on August 1, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 2.

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 2, Repealed 2.

Date Adopted: September 11, 2017.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 93-19-010, filed 9/1/93, effective 10/2/93)

WAC 284-13-280 Real estate appraisals. ~~((1) Except as provided in subsection (2) of this section, for purposes of RCW 48.13.120(1) and 48.13.140, an insurer may rely on an appraisal that is less than one year old.~~

~~((2))~~ An insurer may not rely on an appraisal if the insurer knows or should know that the appraisal is not reliable. An appraisal may be "not reliable" because it was incorrect when done, because conditions affecting the property have changed, or for other reasons.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-16-100 Investments—Encumbrance—Interpretation of RCW 48.13.130.
 WAC 284-16-110 F.H.A. mortgage loans and investments.

AMENDATORY SECTION (Amending WSR 82-23-010, filed 11/5/82, effective 1/1/83)

WAC 284-44-330 Agreement guaranteed by a deposit of cash or securities. (1) If, pursuant to RCW 48.44.030, the agreement is guaranteed by a deposit of cash or securities, ~~((such))~~ the deposit ~~((shall))~~ must be in an amount equal to the greater of (i) one hundred fifty thousand dollars, or (ii) one-twelfth of the total sum of money received during the preceding calendar year as prepayment for health care services, except as provided by WAC 284-44-340.

(2) Securities eligible for ~~((such))~~ the deposit ~~((shall be))~~ are those set forth in RCW ~~((48.13.040, 48.13.050, 48.13.080, 48.13.100, 48.13.200, and 48.13.220. The commissioner may, upon advance approval, allow other securities to be included as deposits pursuant to RCW 48.13.250))~~ 48.13.009 (12), (14), and 48.13.061 (2) and (4).

(3) In determining the value to be assigned to securities for compliance with the depository requirements, market value ~~((shall be))~~ is the measurement.

WSR 17-19-049**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed September 12, 2017, 3:02 p.m., effective October 13, 2017]

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

Purpose: The proposed language amends rules for schools to clarify requirements for initial school licensure, facilities, school closure, school catalogs, enrollment contracts, and cancellation and refund policies. The proposed language also updates language by adding the words hair design and master esthetician throughout the chapter to be consistent with chapter 18.16 RCW.

Citation of Rules Affected by this Order: New WAC 308-20-571, 308-20-573 and 308-20-574; and amending WAC 308-20-010, 308-20-080, 308-20-091, 308-20-101, 308-20-107, 308-20-110, 308-20-115, 308-20-120, 308-20-520, 308-20-550, 308-20-572, and 308-20-575.

Statutory Authority for Adoption: RCW 18.16.030, 43.24.023.

Adopted under notice filed as WSR 17-15-080 on July 17, 2017.

Changes Other than Editing from Proposed to Adopted Version: We have removed the word "capes" from WAC 308-20-110(13), second sentence, to eliminate a conflict with WAC 308-20-110(2).

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 12, Repealed 0.

Date Adopted: September 12, 2017.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-02-033, filed 12/29/15, effective 1/29/16)

WAC 308-20-010 Definitions. (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the month, year and daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, hair design, esthetics, master esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the Washington state apprenticeship and training ~~((committee))~~ council, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, hair designer, barber, manicurist, esthetician, or master esthetician.

(7) "Completion of the apprenticeship training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

(8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with

the shop name, for use in recording apprentice training hours and activities.

(9) "Online training" means an approved electronic learning environment through a licensed school in which a student is enrolled. This training is limited to theory only. Online training may be used for up to twenty-five percent of the approved course of study.

(10) "Accreditation" is a status granted to a postsecondary school by one or more of the accrediting organizations recognized and approved by the U.S. Secretary of Education. Accreditation is voluntary and does not imply automatic transfer of credits from one postsecondary school to another.

(11) "Admission requirements" means the specific minimum criteria a school must use when accepting a student into the school.

AMENDATORY SECTION (Amending WSR 16-02-033, filed 12/29/15, effective 1/29/16)

WAC 308-20-080 Minimum instruction guidelines for cosmetology, hair design, barbering, manicuring, esthetics and master esthetics training. The minimum instruction guidelines for training required for a student or apprentice to be eligible to take the license examination for the following professions shall include:

- (1) For cosmetology:
 - (a) Theory of the practice of cosmetology including business practices and basic human anatomy and physiology;
 - (b) At least 100 hours of skills in the application of manicuring and pedicuring services;
 - (c) At least 100 hours of skills in the application of esthetics services;
 - (d) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (e) Scalp and hair analysis;
 - (f) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (g) Hair styling including wet, dry and thermal styling, braiding and styling aids;
 - (h) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;
 - (i) Artificial hair;
 - (j) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;
 - (k) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;
 - (l) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;
 - (m) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (n) Diseases and disorders of the scalp, hair, skin and nails;
 - (o) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (p) First aid as it relates to cosmetology; and
 - (q) Not all training may be on mannequins.

- (2) For hair design:
 - (a) Theory of the practice of hair design including business practices and basic human anatomy and physiology;
 - (b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (c) Scalp and hair analysis;
 - (d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (e) Hair styling including wet, dry and thermal styling, braiding and styling aids;
 - (f) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;
 - (g) Artificial hair;
 - (h) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;
 - (i) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;
 - (j) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;
 - (k) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (l) Diseases and disorders of the scalp and hair;
 - (m) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (n) First aid as it relates to hair design; and
 - (o) Not all training may be on mannequins.
- (3) For barbering:
 - (a) Theory of the practice of barbering services and business practices and basic human anatomy and physiology;
 - (b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (c) Scalp and hair analysis;
 - (d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (e) Hair styling, wet, dry and thermal styling and styling aids;
 - (f) Cutting and trimming of facial hair including shaving, beard and mustache design and eyebrow, ear and nose hair trimming;
 - (g) Artificial hair;
 - (h) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (i) Diseases and disorders of the skin, scalp and hair;
 - (j) Safety including proper use of implements and electrical appliances;
 - (k) First aid as it relates to barbering; and
 - (l) Not all training may be on mannequins.
- (4) For manicuring:
 - (a) Theory in the practice of manicuring and pedicuring services, business practices and basic human anatomy and physiology;
 - (b) Artificial nails including silk, linen, fiberglass, acrylic, gel, powder, extensions and sculpting, preparation, application, finish and removal;

(c) Cleaning, shaping and polishing of nails of the hands and feet and treatment of cuticles;

(d) Cleaning and disinfecting of individual work station, individual equipment and tools and proper use and storage of linens;

(e) Diseases and disorders of the nails of the hands and feet;

(f) Safety including proper use and storage of chemicals, implements and electrical appliances;

(g) First aid as it relates to manicuring and pedicuring; and

(h) Not all training may be on mannequins.

(5) For esthetics:

Theory in the practice of esthetics services, business practices and basic human anatomy and physiology (750 hours):

(a) Care of the skin compresses, massage, facials, wraps, masks, exfoliation, use of electrical or mechanical appliances or chemical compounds;

(b) Temporary removal of superfluous hair of the skin by means including tweezing, waxing, tape, chemicals, lotions, creams, sugaring, threading, mechanical or electrical apparatus and appliances;

(c) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(d) Diseases and disorders of the skin;

(e) Safety including proper use and storage of chemicals, implements and electrical appliances;

(f) First aid as it relates to esthetics; and

(g) Not all training may be on mannequins.

(6) Master esthetics (450 additional hours):

Theory in the practice of master esthetics, business practices, and basic human anatomy and physiology including all of subsection (4) of this section and the following:

(a) Laser, light frequency, radio frequency, ultrasound, and plasma practices;

(b) Medium depth chemical peels;

(c) Advanced client assessment, documentation, and indications/contraindications;

(d) Pretreatment and post-treatment procedures;

(e) Lymphatic drainage and advanced facial massage;

(f) Advanced diseases and disorders of the skin; and

(g) Advanced theories; alternative, touch, and spa body treatments.

(h) The use of medical devices during instruction of the master esthetics curriculum must comply with state law and rules, including any laws that require delegation or supervision by a licensed health professional acting within the scope of practice of that health professional. A detailed written explanation of how the course will be taught must be submitted and approved by the department.

(7) Online training curriculums must be approved by the department.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-091 Student credit for training in a licensed salon/shop. (1) A maximum ten percent of the total

curriculum hours required may be earned by a student in a licensed salon/shop under a contract approved by the department signed by the student, the school owner, and the salon/shop manager.

(2) A copy of the signed contract shall be kept in the student file, kept on file at the salon shop and given to the student and shall be made available to the department on request.

(3) Only those hours of instruction a student is given under the direction of (~~a licensed~~) an operator licensed in the curriculum in which the student is enrolled in the contracted licensed salon/shop, and in the subjects agreed to in the contract shall be credited towards completion of the course of study required in RCW 18.16.100.

(4) Students will not receive any wages or commission for hours of credit earned in a salon/shop.

(5) Salon/shops shall provide weekly reports to the school and student with hours the student earned in each area of agreed training.

(6) Weekly reports provided by salon/shops verifying hours student earns in salon training must be included in student's records and recorded on student's monthly and final reports.

(7) Licensed operators must be physically present where students are training.

(8) Students in training must wear identification visible to the public that states that they are students in training.

(9) Certified training hours expire three years after the last day of attendance. Any hours earned by a student that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-101 Apprentice credit for training in an approved apprentice salon/shop. (1) A minimum of one trainer per apprentice is required.

(2) Only those hours of theory instruction given under the direction of an instructor licensed under chapter 18.16 RCW shall be credited towards completion of the apprentice curriculum requirements for theory hours. Cosmetologist, hair design, barber, manicurist (~~and~~), esthetician and master esthetician theory hours must be taught in a classroom setting under the (~~direct~~) supervision of an instructor licensed in the curriculum for which he or she is providing theory instruction.

(3) With the exception of theory hours, only those hours of instruction an apprentice is given under the direction of an apprentice trainer as defined in WAC 308-20-010 and in the standards developed by the apprenticeship program shall be credited toward completion of the apprenticeship training.

(4) When all of the apprenticeship program requirements have been met by the apprentice and within thirty days of an apprentice's completed training, the committee shall provide to the apprentice a copy of the apprentice's final report.

(5) An apprentice may transfer between shops only when the Washington state apprenticeship council or the Washing-

ton state department of labor and industries approves the transfer.

(6) Apprentice trainers and instructors must be physically present where apprentices are receiving practical training.

(7) Certified training hours expire three years from last date of attendance. Any hours earned by an apprentice that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-107 Use and training of instructor-trainees. (1) Instructor-trainees shall be supervised at all times by a licensed instructor. The licensed instructor shall be physically present where the instructor-trainee is working and be available for consultation with the instructor-trainee. The instructor-trainee may not act as a substitute for the licensed instructor.

(2) Instructor-trainees shall hold a current Washington state cosmetology, hair design, barber, manicurist, esthetician, or master esthetician license in good standing prior to enrolling in an instructor-trainee program. A copy of the instructor-trainee's valid Washington state operator license shall be kept in the student's file.

AMENDATORY SECTION (Amending WSR 16-02-033, filed 12/29/15, effective 1/29/16)

WAC 308-20-110 Minimum safety and sanitation standards for schools, cosmetologists, hair designers, manicurists, estheticians, master estheticians, barbers, instructors, salons/shops, mobile units and personal services. Every licensee shall maintain the following safety and sanitation standards. In addition, school instructors and apprentice trainers must assure persons training in a school or apprentice salon/shop will adhere to the following safety, sanitation and disinfection standards:

(1) Requirements and standards.

(a) All locations where chemical services are provided to clients must have a dispensing sink with hot and cold running water. Dispensing sinks are used for mixing chemicals, and disinfecting supplies, tools, equipment, and other materials. Dispensing sinks must be labeled "not for public use."

(b) On-site laundry facilities must be maintained in clean condition.

(c) Single-use hand soap and disposable or single-use hand-drying towels for customers must be provided.

(d) Use of bar soap or a common towel is prohibited.

(e) A licensee must not perform or continue services on a client with visible open sores, inflamed skin, rash, or parasitic infestations.

(f) No licensee who knowingly has open sores, or who is exhibiting symptoms of an infectious or contagious disease or a disorder of the skin or a parasitic infestation shall provide services in cosmetology, hair design, manicuring, barbering, esthetics, or master esthetics while the licensee has the above mentioned symptoms.

If a licensee or a client has exhibited the symptoms mentioned in (e) and (f) of this subsection, the area in which the affected individual received or provided services, and all equipment and implements that could have possibly been touched by that individual shall be cleaned and disinfected, including the work and waiting areas.

(g) All liquids, creams, and other cosmetic preparations including paraffin wax and depilatory wax must be kept in clean and closed containers.

(h) All bottles and containers must be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances must be additionally and distinctly marked as such.

(i) Items subject to possible cross contamination such as liquids, creams and lotions, cosmetic preparations and chemicals including paraffin wax and depilatory wax must be dispensed in a way that does not contaminate the remaining portion by using a disposable, or (~~sanitized~~) cleaned and disinfected applicator. Applicators shall not be redipped in product. Liquids must be dispensed with a squeeze bottle, pump, or spray. Any product that cannot be disinfected that comes in contact with the client shall be discarded after use on that particular client.

(j) Pencil cosmetics must be sharpened before each use. Clean and disinfect or dispose of the sharpener after service on each client.

(k) A licensee must thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom.

(l) A client's skin upon which services will be performed must be washed with soap and warm water or wiped and/or sprayed with antiseptic or waterless hand cleanser approved for use on skin before a service.

(m) After service on each client, hair and nail clippings must immediately be placed in a closed covered waste container.

(2) Articles in contact with a client.

(a) A neck strip or towel must be placed around the client's neck to prevent direct contact between a multiple use haircloth or cape and the client's skin, and must be in place during entire service.

(b) All items, which come in direct contact with the client's skin that do not require disinfecting, must be discarded after each use.

(3) Materials in contact with a client.

(a) Paraffin wax and depilatory wax must be covered in a manner to prevent contamination except during the waxing service, and maintained at a temperature specified by the manufacturer's directions.

(b) Paraffin wax and depilatory wax must be dispensed in a way that does not contaminate the remaining portion by using one of the following methods:

(i) Use a new spatula each time wax is removed from the pot;

(ii) Apply wax directly onto a disposable strip;

(iii) Use one dedicated spatula to remove wax from the pot, and then spread the wax with a second spatula. The first

spatula should never come in contact with either the client's skin or the second spatula; or

(iv) Separate a quantity of wax from the main wax pot to use on a single client; this quantity should be placed in a small single-use container. Double-dipping is allowed from a single client-use container.

(c) All used wax that has been in contact with a client's skin shall not be reused under any circumstances and shall be disposed of immediately after each use.

(d) All wax pots shall be cleaned and disinfected according to manufacturer's directions. No applicators shall be left standing in wax at any time.

(4) Chemical use and storage.

(a) When administering services to a client that involve the use of chemicals or chemical compounds, all licensees must follow safety procedures according to manufacturer's directions or safety data sheets (SDSs), to prevent injury to the client's person or clothing.

(b) Salon shops, personal service, mobile units and schools shall have in the immediate working area access to all safety data sheets (SDSs) provided by manufacturers for any chemical products used.

(c) Flammable chemicals must be stored away from potential sources of ignition.

(d) Chemicals which could interact in a hazardous manner such as oxidizers, catalysts, and solvents, must be stored per manufacturer's instruction.

(e) Licensees using chemicals or chemical compounds when providing services to clients must store the chemicals so as to prevent fire, explosion, or bodily harm. All chemicals must be stored in accordance with the manufacturer's directions.

(5) Refuse and waste material.

(a) All waste must be deposited in a covered waste disposal container. Containers located in the reception or office area, which do not contain waste relating to the performance of services, are exempt from having covers.

(b) All chemical, flammable, toxic or otherwise harmful waste material must be disposed of in the manner required by local hazardous waste management regulations.

(c) All waste containers must be emptied when full. Surfaces of waste disposal containers must be kept clean.

(d) Any disposable sharp objects that come in contact with blood or other body fluids must be disposed of in a sealable rigid (puncture proof) labeled container that is strong enough to protect the licensee, client and others from accidental cuts or puncture wounds that could happen during the disposal process.

(e) Licensees must have sealable rigid containers available for use at all times services are being performed.

(6) **Sanitation/disinfecting.** Environmental Protection Agency (EPA) approved disinfectants are indicated by their registration number on the product label. The product's manufacturer's directions for use shall always be followed.

(a) All tools and implements must be cleaned and disinfected or disposed of after service on each client. Tools and implements not approved for disinfection and reuse under manufacturers' specifications must be given to the client or discarded after service on each client. These tools and implements include, but are not limited to: Nail files, cosmetic

make-up sponges, buffer blocks, sanding bands, toe separators or sleeves, orangewood sticks, and disposable nail bits. Presence of used articles in the work area will be considered prima facie evidence of reuse.

(b) When used according to the manufacturer's directions, each of the following is an approved method of disinfecting tools and implements after they are cleaned of debris:

(i) Complete immersion or spray with an EPA-registered disinfectant solution of the object(s) or portion(s) thereof to be disinfected; or

(ii) Steam sterilizer, registered and listed with the U.S. Food and Drug Administration; or

(iii) Dry heat sterilizer, registered and listed with the U.S. Food and Drug Administration, or Canadian certification.

(c) All cleaned and disinfected tools and implements must be stored in a closed nonairtight container or UV sterilizer. UV sterilizers shall be used only for clean storage of already cleaned and disinfected tools and implements.

(d) All disinfecting solutions and/or agents must be kept at manufacturer recommended strengths to maintain effectiveness, be free from foreign material and be available for immediate use at all times the location is open for business and changed daily.

(e) All articles, which come in direct contact with the client's skin that cannot be cleaned and disinfected, must be disposed of in a waste receptacle immediately after service on each client. Presence of these articles in the work area will be considered prima facie evidence of reuse.

(f) Disposable protective gloves must be disposed of after service on each client.

(7) Disinfecting nonelectrical tools and implements.

(a) All tools and implements used within a field of practice must be cleaned and disinfected after service on each client in the following order:

(i) **Remove** all hair and/or foreign material;

(ii) **Clean** thoroughly with soap or detergent and water;

(iii) **Rinse** thoroughly with clear, clean water; and

(iv) **Disinfect** with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to manufacturer's directions or in a steam sterilizer or dry heat sterilizer under subsection (6)(b)(ii) and (iii) of this section.

(b) Tools and implements without sharp edges or points, including but not limited to combs, brushes, rollers, rods, etc., must be totally immersed in an EPA registered disinfectant according to manufacturer's directions.

(c) Clips or other tools and instruments must not be placed in mouths, clothing, pockets or (~~unsanitized~~) unclean holders.

(d) A client's personal tools and instruments must not be used in the establishment except when prescribed by a physician.

(8) **Disinfecting electrical tools and implements.** Electrical tools and implements must be disinfected after service on each client in the following order:

(a) Remove hair and/or foreign matter;

(b) Disinfect with an EPA disinfectant specifically made for electrical tools and implements.

(9) Storage of tools and implements.

(a) New and/or cleaned and disinfected tools and implements must be stored separately from all other items.

(b) Used tools and implements must be stored in a labeled drawer or container at the work station.

(c) Roller storage receptacles and contents must be cleaned and disinfected and free of foreign material.

(d) Storage cabinets, work stations and storage drawers for cleaned and disinfected tools and implements must be free of debris and used only for cleaned and disinfected tools and implements.

(10) Cleaning and disinfecting foot spas.

(a) As used in this section, "foot spa" or "spa" is defined as any basin using circulating water.

(b) After each client:

(i) **Drain** the water from the foot spa basin and remove any visible debris;

(ii) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain;

(iii) **Disinfect** the surface with an EPA registered disinfectant according to the manufacturer's directions on the label. Surfaces must remain wet with disinfectant for ten minutes or the time stated on the label.

(c) Nightly:

(i) For whirlpool foot spas, air-jet basins, "pipeless" foot spas and other circulating spas:

(A) **Drain** the water from the foot spa basin or bowl and remove any visible debris.

(B) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain.

(C) **Disinfect** - Fill the basin with clean water, adding the appropriate amount of EPA registered disinfectant. Turn the unit on to circulate the disinfectant for the entire contact time according to the manufacturer's directions on the label.

(D) **Drain and rinse** the basin with clean water and allow to air dry.

(ii) For foot spas with filter screens, inlet jets and other removable parts that require special attention during the disinfecting process.

(A) **Drain** the water from the foot spa basin and remove any visible debris.

(B) **Remove** the filter screen, inlet jets and all other removable parts from the basin and clean out any debris trapped behind or in them.

(C) **Scrub** the removable parts using a brush and soap or detergent.

(D) **Rinse** the removed parts with clean water and replace them in the basin.

(E) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain.

(F) **Disinfect** - Fill the basin with clean water, adding the appropriate amount of EPA registered disinfectant. Turn the unit on to circulate the disinfectant for the entire contact time according to the manufacturer's directions on the label.

(G) **Drain and rinse** the basin with clean water and allow to air dry.

(d) A record must be made of the date and time of each cleaning and disinfecting as required by (c) and (d) of this subsection. This record must be made at the time of cleaning and disinfecting. Cleaning and disinfecting records must be

made available upon request by either a client or a department representative.

(e) For simple basins and reusable liners (no circulation):

(i) **Drain** the basin and remove any visible debris.

(ii) **Scrub** the basin with a clean brush and soap or detergent following manufacturer's directions.

(iii) **Rinse** the basin with clean water and drain.

(iv) **Disinfect** basin surfaces with an EPA registered disinfectant following manufacturer's directions. Surfaces must remain wet with disinfectant for ten minutes or the contact time stated on the label.

(v) **Drain and rinse** the basin with clean water and allow to **air dry**.

(11) Headrests, shampoo bowls, and treatment tables.

(a) The headrest of chairs must be cleaned and disinfected after service on each client.

(b) Shampoo trays and bowls must be cleaned and disinfected after each shampoo, kept in good repair and in a clean condition at all times.

(c) All treatment tables must be cleaned, disinfected and covered with clean linens or examination paper, which must be changed after each service on a client.

(12) Walls, floors, and ceilings. Walls, floors, and ceilings must be cleaned and disinfected as necessary and kept clean and free of excessive spots, mildew, condensation, or peeling paint.

(13) Towels, linens, capes and robes. No towels, linens, (~~cap~~) or robes shall be used more than once without proper laundering as described in this section.

(14) All towels, linens, capes, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to manufacturer's directions for disinfecting purposes. A closed dustproof cabinet with solid sides and a top shall be provided for cleaned towels, linens, capes and robes. A hamper with solid sides or a receptacle that is closed and ventilated shall be provided for all soiled cloth towels, linens, capes and robes and never left overnight.

(15) Prohibited hazardous substances - Use of products. No establishment or school may have on the premises cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration for use in cosmetic products. Use of 100% liquid methyl methacrylate monomer and methylene chloride products are prohibited. No product must be used in a manner that is disapproved by the U.S. Food and Drug Administration.

(16) Prohibited instruments or practices. Any razor-edged tool, which is designed to remove calluses.

(17) Blood spills. If there is a blood spill or exposure to other body fluids during a service, licensees and students must stop and proceed in the following order:

(a) Stop service;

(b) Put on gloves;

(c) Clean the wound with an antiseptic solution;

(d) Cover the wound with a sterile bandage;

(e) If the wound is on a licensee hand in an area that can be covered by a glove or finger cover, the licensee must wear a clean, fluid proof protective glove or finger cover. If the wound is on the client, the licensee providing service to the client must wear gloves on both hands;

(f) Discard all contaminated objects. Contaminated objects shall be placed in a sealed plastic bag and that bag must be placed inside another plastic bag and discarded;

(g) All equipment, tools and instruments that have come into contact with blood or other body fluids must be cleaned and disinfected or discarded;

(h) Remove gloves; and

(i) Wash hands with soap and water before returning to the service.

(18) **First-aid kit.** The establishment must have a first-aid kit that contains at a minimum:

- Small bandages;
- Gauze;
- Antiseptic; and
- A blood spill kit that contains:
 - Disposable bags;
 - Gloves.

(19) **Restroom.**

(a) All locations must have a restroom available. The restroom must be located on the premises or in adjoining premises, which is reasonably accessible.

(b) All restrooms located on the premises must be kept clean and in proper working order at all times.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions. The department shall issue a license to any person who is properly licensed in any state, territory, or possession of the United States, or foreign country if the applicant submits:

- (1) Application;
- (2) Fee;
- (3) Proof that he or she is currently licensed in good standing as a cosmetologist, hair designer, barber, manicurist, esthetician, master esthetician, instructor, or the equivalent in that jurisdiction;
- (4) Provides proof that he or she has passed an examination approved by the director.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-120 Written and performance examinations. (1) The department shall administer or approve the administration of a written and performance license examination. The department may approve written or performance examinations given by department-approved examination providers.

(2) The written and performance examinations for cosmetologist, hair design, barber, manicurist, esthetician, and master esthetician shall reasonably measure the applicant's knowledge of safe and sanitary practice.

(3) The written and performance examinations for instructors shall be constructed to measure the applicant's knowledge of lesson planning and teaching techniques.

(4) In order to be eligible for licensure, a license applicant must pass both the written and performance examinations in the practice for which they are applying.

(5) The minimum passing score for both the written and performance examinations in all practices is a scaled score of 75.

(6) Examination results expire three years from the date of the examination. Examination results that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

WAC 308-20-520 Minimum salon/shop, mobile unit, and personal services licensing standards. No person shall operate a cosmetology, hair design, barbering, esthetics, master esthetics, or manicuring salon/shop, mobile unit, or personal services business in this state unless the business has qualified for and has in their possession a location license issued by the department of licensing. If the ownership of the business changes, a new complete application must be submitted for approval and license issuance. Licenses are not transferable.

(1) An operator that leases space must obtain both a valid operator and salon/shop license for that specific location.

(2) A business that has one or more branch locations shall obtain a separate salon/shop license for each location.

(3) A licensed operator who provides cosmetology, hair design, barbering, esthetics, master esthetics, or manicuring services to place-bound clients in the client's home or in a long or short term health care facility is not required to obtain a location license.

(4) A long or short term health care facility that establishes a salon/shop and operates it on a for profit basis for clients other than place-bound clients shall obtain a location license.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-550 Posting of required licenses, registrations, permits, notice to consumers, and current inspection form. (1) Licenses, the consumer notice required by chapter 18.16 RCW, the apprentice salon/shop notice as defined in WAC 308-20-555, and the most current inspection form shall be posted in direct public view.

(2) Original operator licenses with an attached current photograph shall be posted in clear view of clients in the operator's work station.

(3) Original instructor licenses with an attached current photograph shall be posted in clear view of the public.

(4) Original school, instructor, salon/shop, and mobile unit licenses shall be posted in the reception area.

(5) Personal services shall display their licenses and consumer notice in direct view of their client.

(6) A pocket identification card may not be used in lieu of an original license.

(7) No license which has expired or become invalid for any reason shall be displayed by any operator, instructor, or business in connection with the practice of cosmetology, hair design, barbering, esthetics, master esthetics, or manicuring.

Any license so displayed shall be surrendered to a department representative upon its request.

(8) Licenses issued by another state, territory, or foreign country shall not be displayed in any salon/shop.

(9) A receipt, issued by the department of licensing, showing the application for a duplicate license may be used if the original has been lost, stolen, or otherwise destroyed until the duplicate license is received.

NEW SECTION

WAC 308-20-571 Initial school licensure requirements. The education and experience of administrators, faculty, and other staff must be adequate to ensure that students will receive educational services consistent with the stated program objectives. School directors/administrators must have at least two years of experience working in a school or in the business administration field. Prior to approval of application for licensure, any person wishing to operate a school shall meet the requirements in RCW 18.16.140 and provide the following to the department:

(1) An identification of owners, shareholders, and directors:

(a) Complete legal name, personal telephone number, and home mailing address of the owner, shareholders, and directors.

(b) The form of ownership; e.g., sole proprietorship, partnership, limited partnership, or corporation.

(c) Names, addresses, personal phone numbers, email addresses, and prior school affiliations if any, of all individuals with ten percent or more ownership interest.

(2) A school that is a corporation or a subsidiary of another corporation must submit:

(a) Current evidence that the corporation is registered with the Washington secretary of state's office;

(b) The name, address, and telephone number of the corporation's registered agent.

(3) Schools under common ownership may designate a single licensed location as the principal facility for record-keeping via written notice to the department.

(4) If leasing a space, a copy of the rental agreement.

(5) A catalog, enrollment agreement and cancellation and refund policy in accordance with chapter 308-20 WAC.

(6) Sample of all monthly student reports.

(7) Listing of all instructors including license number and expiration date.

(8) A description of programs and course offerings in accordance with chapter 308-20 WAC.

(9) The school must furnish proof that they provide liability coverage for students.

(10) Days and hours of operation of the school.

(11) A signed fire inspection report from the local fire authority indicating all standards and requirements have been met.

(12) Schools must design and implement programs required under WAC 308-20-080 to include content, duration, appropriate entrance criteria, instructional materials, staff, equipment and facilities to prepare students for the program's occupational objectives.

(13) The school must submit an exact floor plan of the physical location which:

(a) Is drawn to scale showing placement of all equipment; areas designated for the clinic, dispensary, classroom, office and restrooms; and identify student capacity. The floor plan shall include the total square footage of the school.

(b) Is adequate to meet the needs of its students and the objectives of the program;

(c) Provides a learning environment with enough classroom, laboratory, and shop space for the number of students to be trained; and

(d) Is maintained in compliance with state laws and local ordinances related to safety and health.

(14) The school must have equipment, furniture, instructional devices and aids, machinery, and other physical features that are adequate to accommodate the enrolled students at all times.

(15) Schools shall only offer educational services that have been approved by the department: All new program or course approval and program revisions shall be submitted to the department in a format prescribed by the department for review and approval prior to the proposed date of implementation.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-572 Inspection of schools. ~~((+))~~ All locations shall pass an inspection by a department representative which shall meet the following requirements prior to approval of application or renewal for licensure~~(, any person wishing to operate a school shall, meet the requirements in RCW 18.16.140; submit to an inspection of the site; and provide the following:~~

~~(a) Name of owner and current mailing and physical address if solely owned.~~

~~(b) Names of partners and current mailing and physical addresses if a partnership.~~

~~(c) Names of corporate officers and current mailing and physical addresses if a corporation.~~

~~(d) Name of the school, complete mailing address, and physical address.~~

~~(e) Days and hours of operation of the school.~~

~~(f) A signed fire inspection report from the local fire authority indicating all standards and requirements have been met.~~

~~(g) Listing of all instructors including license number and expiration date.~~

~~(h) Sample of all monthly student reports.~~

~~(i) Sample of student packet to be provided to student at enrollment that must contain, but is not limited to, a copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies.~~

~~(j) Floor plan drawn to scale showing placement of all equipment; areas designated for the clinic, dispensary, classroom, office and restrooms; and identify student capacity. The floor plan shall include the square footage of the school.~~

~~(2) All locations shall pass a prelicensing inspection by a department representative by meeting the following requirements):~~

~~((a))~~ (1) A permanent entrance sign designating the name of the school.

~~((b))~~ (2) A time clock and time cards or other equipment necessary for verification of daily student attendance and hours earned.

~~((c))~~ (3) An adequate supply of hot and cold running water shall be available for school operation.

~~((d))~~ (4) Textbooks/teaching materials - Textbooks shall be required for each student in attendance.

~~((e))~~ (5) Lavatories with hot and cold running water, single-use hand soap and disposable or single-use hand drying towels or an automatic hand dryer.

~~((f))~~ ~~When a salon and school are under the same ownership in the same building, separate operation of the salon and the school must be maintained. Common reception areas and restrooms will be allowed; however, the salon and school must have separate entrances and meet location requirements identified in chapter 18.16 RCW.~~

~~((g))~~ (6) A school and salon/shop shall not be operated in the same location. A school and salon/shop shall have separate exterior entrances and shall not share an interior passageway.

(7) Emergency evacuation plans posted for staff and students.

~~((h))~~ (8) There must be a sufficient number of tables/desks and chairs to accommodate the registered students.

~~((i))~~ (9) Department of licensing safety and sanitation guidelines posted in all dispensaries and classrooms.

~~((j))~~ (10) Supplemental training space must be preapproved by the department.

~~((k))~~ (a) The supplemental training space must be located within two miles of the original facility of the licensed school.

~~((l))~~ (b) A duplicate copy of the school license shall be posted at the supplemental training space.

~~((m))~~ (c) A duplicate copy of each instructor's license with a current photograph shall be posted at the supplemental training space.

~~((n))~~ (d) The supplemental training space shall bear the same name as the original licensed school.

~~((o))~~ (e) Supplemental training space is only approved for theory and/or practice rooms. No clinic services shall be provided in supplemental training space.

~~((p))~~ (11) Schools must post a sign that contains the words "work done exclusively by students" or "all work performed by students under supervision of a licensed instructor" in the reception or clinic area.

NEW SECTION

WAC 308-20-573 School catalog, enrollment agreement/contract and cancellation and refund policy minimum requirements. (1) Each school must publish a catalog that explains its operations and requirements. The catalog must be current, comprehensive, and accurate. The school must provide the following, in some combination of a catalog, brochure, or otherwise written material and disclose that information to each prospective student prior to completing an enrollment agreement. The catalog must include at least the following:

(a) Date of publication;

(b) Names, physical and mailing addresses, and telephone numbers of the school's administrative offices and all supplemental training spaces;

(c) Names and qualifications of faculty. The list must be accurate as of the date of catalog publication. Any changes in faculty must be noted on a catalog correction sheet;

(d) The school calendar, including hours of operation, holidays, courses, or programs as may be appropriate;

(e) Admissions procedures, including policies describing all prerequisites needed by entering students to successfully complete the programs of study in which they are enrolled;

(f) A description of the job placement assistance offered, if any. If no assistance is offered, the school must make that fact known;

(g) The school's policy regarding student conduct, including causes for dismissal and conditions for readmission;

(h) The school's grievance policy. The policy must be preceded by "Nothing in this policy prevents the student from contacting the Department of Licensing at any time with a concern or a complaint.";

(i) The school's policy regarding leave, absences, makeup work (if applicable), and tardiness;

(j) The school's policy regarding standards of progress required for the student;

(k) An accurate description of the school's facilities and equipment available for student use, and the student/teacher ratio;

(l) The total cost of training including registration fee if any, tuition, books, supplies, equipment, and all other charges and expenses necessary;

(m) A description of each program of instruction, including:

(i) Specific program objectives including the job titles for which the program purports to train;

(ii) The number of clock hours of instruction, the method of instruction (e.g., correspondence, classroom, lab, computer assisted), and the average length of time required for successful completion;

(iii) For schools offering online theory training, instructional sequences must be described in numbers of lessons.

(n) The scope and sequence of courses or programs required to achieve the educational objective;

(o) A statement indicating the type of educational credential that is awarded upon successful completion;

(p) The school's cancellation and refund policy;

(q) The following statement must appear prominently on either the first or last printed page or inside the front or back cover: "This school is licensed under chapter 18.16 RCW. Inquiries, concerns, or complaints regarding this school can be made to the Department of Licensing, (insert mailing address, email or by telephone).";

(r) The availability of financing, if any; and

(s) Supplements or correction sheets for the catalog and other written materials related to enrollment must be filed with the department prior to being used;

(i) The supplement or correction sheet must include its publication date;

(ii) In the event information on a supplement or correction sheet replaces information contained in the catalog, the insert must identify the information it replaces.

(2) An enrollment agreement/contract is any agreement that creates a binding obligation to purchase a course of instruction from a school. Each school must use an enrollment contract or agreement that includes:

(a) The school's cancellation and refund policy, in accordance with chapter 308-20 WAC.

(b) The following statement: This school is licensed under chapter 18.16 RCW. Inquiries, concerns, or complaints regarding this school can be made to the department of licensing, (insert mailing address, email or by telephone).

(c) Information that will clearly and completely define the terms of the agreement between the student and the school. The enrollment agreement must include at least the following:

(i) The name and address of the school and the student;

(ii) The program or course title as it appears in the school's catalog, date training is to begin, and the number of hours or units of instruction or lessons for which the student is enrolled;

(iii) Language explaining that the agreement will be binding only when it has been signed and dated by the student and an authorized representative of the school prior to the time instruction begins; and

(iv) A statement that any changes in the agreement will not be binding on either party unless such changes have been acknowledged in writing by an authorized representative of the school and by the student or the student's parent or guardian if he/she is a minor.

(d) The school must provide all students with a copy of the signed enrollment agreement, and any other documents related to their enrollment.

(3) The official date of termination or withdrawal of a student shall be determined in the following manner:

(a) The date on which the school recorded the student's last day of attendance;

(b) The date on which the student is terminated for a violation of a published school policy which provides for termination.

(4) Tuition/registration fees may be collected in advance of a student signing an enrollment agreement; however, all moneys paid by the student shall be refunded if the student does not sign an enrollment agreement and does not commence participation in the program.

(a) The school must refund all money paid if the applicant is not accepted. This includes instances where a starting class is canceled by the school;

(b) For discontinued programs: If instruction in any program is discontinued after training has begun or if the school moves from one location to another, it must either:

(i) Provide students pro rata refunds of all tuition and fees paid; or

(ii) If the school plans to discontinue a program, it must notify the department and affected students in advance in writing at a minimum of thirty days notice.

NEW SECTION

WAC 308-20-574 School closure process. (1) Ceases to provide educational services means that a stoppage of training has occurred because:

(a) Facilities are rendered continuously unusable for a period of thirty calendar days or more; or

(b) Faculty or qualified substitutes assigned to a specific class are not available or otherwise fail to perform instructional duties for five or more successive days of scheduled instruction; or

(c) Bankruptcy proceedings or other financial conditions exist that result in the school interrupting scheduled instruction for five or more successive days; or

(d) Adverse action has been taken by a federal, state, or local jurisdiction which results in the school interrupting scheduled instruction for five or more successive days.

(2) The school must take measures to protect the contractual rights of present and former students if it ceases to provide educational services.

(3) If the school ceases to provide educational services, either voluntarily or involuntarily, it must:

(a) Inform the department promptly by the most expeditious means available and send confirmation by certified mail within three business days;

(b) Provide the name, address, and telephone number of the person(s) designated to be responsible for fulfilling the requirements of this section;

(c) Provide the department with the following information for each student who has not completed a course or program:

(i) Name;

(ii) Social Security number;

(iii) Address and telephone number of record;

(iv) Program name and amount of tuition and fees charged;

(v) Amount of tuition and fees paid to date;

(vi) Amount of class time left to complete the course or program; and

(vii) If the tuition and fees were paid through federal student aid, the amount and type of aid.

(d) A written notice must be distributed to all enrolled students at least three business days prior to a planned interruption or closure. The notice must explain the procedures students are to follow to secure refunds or continue their education. A copy of the notice must also be submitted to the department within three business days;

(e) File with the department procedures for disbursement of refunds to students and set a date no longer than thirty calendar days from the last day of instruction to issue refund checks in the full amount for which students are entitled.

(4) File with the department its plans if any, for teach-out; ensuring that all affected students will continue to receive training at another institution of the similar quality and content as that for which they contracted:

(5) Refunds must be paid to the individual based on a day-by-day proportion of the services provided compared to the total length of the program.

(6) Make specific arrangements to transfer transcripts and other student records described under chapter 308-20 WAC to the department's custody.

(7) Remove or shutdown the school's web site and cease advertising.

(8) File with the department any information needed to complete the closure of the school.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-575 School license renewal process. (1) Each school license shall be renewed on a yearly basis. In addition to the site inspection, the renewal request, along with the fee, shall be accompanied by:

(a) Certification of annual gross tuition and surety bond in an amount equal to ten percent of the annual gross tuition, but not less than ten thousand dollars or more than fifty thousand dollars;

(b) ~~((Current copies of curriculum, catalogs, and brochures;))~~ Copy of the school's catalog, enrollment agreement/contract, curriculums, student monthly reports, current and accurate floor plan;

(c) Current list of instructor names and license numbers;

(d) Updated school information on forms provided by the department including the days and hours of operation of the school; ~~((and))~~

(e) Verification of current student/instructor ratio;

(f) An identification of owners, shareholders, and directors:

(i) Complete legal name, personal telephone number, and home mailing address of the owner, shareholders, and directors;

(ii) The form of ownership; e.g., sole proprietorship, partnership, limited partnership, LLC, or corporation; and

(iii) Names, addresses, personal phone numbers, and prior school affiliations if any, of all individuals with ten percent or more ownership interest.

(g) A school that is a corporation or a subsidiary of another corporation must submit:

(i) Current evidence that the corporation is registered with the Washington secretary of state's office; and

(ii) The name, address, and telephone number of the corporation's registered agent.

(h) A signed fire inspection report from the local fire authority indicating all standards and requirements have been met; and

(i) The school must submit an exact floor plan of the physical location which is drawn to scale showing placement of all equipment; areas designated for the clinic, dispensary, classroom, office and restrooms; and identify student capacity. The floor plan shall include the square footage of the school.

(2) Licenses must be renewed on or before the expiration date. Failure to renew the license by the expiration date shall result in a penalty. If not renewed on or before the expiration date, the school shall not credit students any hours until the license has been renewed.

(3) Failure to receive a notice of license renewal from the department does not constitute cause for failure to renew.

WSR 17-19-051

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 13, 2017, 8:35 a.m., effective October 14, 2017]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Approval by USDA GIPSA, FGIS.

Purpose: The department is amending chapter 16-240 WAC to add a lower third tier tonnage fee rate that will help maintain the grain inspection program's six month operating fund balance. A second amendment adds inspection-only fee rates for barges under USGSA Table 2 and AMA Table 2, creating a mechanism for the program to charge for requested service. A third amendment adds language for the program to charge an hourly rate for any service requested outside of the established fees. In addition, one term is added and another term is expanded on in the definitions.

Citation of Rules Affected by this Order: Amending WAC 16-240-010, 16-240-020, 16-240-036, 16-240-038, 16-240-039, 16-240-040, 16-240-042, 16-240-043, 16-240-044, 16-240-046, 16-240-048, 16-240-050, 16-240-052, 16-240-054, 16-240-060, 16-240-070, 16-240-080, and 16-240-090.

Statutory Authority for Adoption: RCW 22.09.020.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-15-118 on July 19, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 18, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 18, 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 13, 2017.

Kirk Robinson
Deputy Director

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-010 Definitions. "Business day" means Monday through Friday, excluding state holidays.

"Department" means the Washington state department of agriculture.

"Federal fiscal year" means October 1st through September 30th for GIPSA, FGIS.

"Fee" means any charge made by the department for:

(1) Inspecting and handling any commodity; or

(2) Any service related to weighing or storing grains or commodities.

"**Fiscal year**" means July 1st through June 30th for the state of Washington.

"**GIPSA, FGIS**" means the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.

"**Metric ton**" means two thousand two hundred four and six-tenths pounds.

"**Minimum operating fund balance**" or "**MOFB**" means six months of grain inspection program operating expenses to ensure stable service delivery, meet future needs, and protect against financial instability. The factors that the department considers when setting the annual MOFB under WAC 16-240-043 include the projected program staff salary and benefits; costs of the program's goods and services, including transportation; costs associated with the department's administrative support of the program; and any additional costs associated with program oversight by USDA/FGIS.

"**Official commercial inspection services**" means a contractual agreement between the applicant and the department for services specified by the applicant that will be provided at an applicant's facility.

"**Revenue minimum**" means the amount of revenue that must be collected by the department to offset expenses. In order to act as an official inspection agency under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, the program must collect revenue to offset expenses. The grain inspection program is supported entirely by the fees it generates from the services it provides as required by RCW 22.09.790. The circumstances under which charges occur to collect the revenue minimum are stated in WAC 16-240-038.

"**Service point**" means the Washington state department of agriculture offices and surrounding service areas authorized by the Federal Grain Inspection Service to provide sampling, inspecting, weighing, and certification services.

"**Shift**" means an established period of staffing for up to twelve hours at transloading facilities or up to eight hours at export port or domestic service point locations. Service requests in excess of the established period would require requesting an additional shift. Any work beyond the established shift period constitutes an additional shift.

"**Unstaffed export locations**" means a facility that does not have a permanent staffing request in place for day, night, swing, or graveyard shifts.

"**USDA**" means the United States Department of Agriculture.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-020 Washington state grain and commodity service points. The offices located in the following cities are service points for providing sampling, inspecting, weighing, and certification services.

(1) Service points:

(a) Colfax.

(b) Kalama (North).

(c) Kalama (South).

(d) Longview.

(e) Olympia.

(f) Othello.

(g) Pasco.

~~((g))~~ (h) Quincy.

(i) Seattle.

~~((h))~~ (j) Spokane.

~~((i))~~ (k) Tacoma.

~~((j))~~ (l) Vancouver.

(2) Aberdeen has been delegated to Washington state as a service point by the Federal Grain Inspection Service. Services for Aberdeen are as follows:

(a) Services for Aberdeen may be requested through the Tacoma grain inspection office.

(b) Travel time and mileage will be ~~((assessed))~~ charged from Tacoma to Aberdeen for all services requested at Aberdeen until a permanent staff is established.

(3) Inspection points may be added or deleted within the department's delegated and designated service area.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-036 Permanent staffing requests. An applicant may request the department to establish permanent staffing on shifts as shown below:

(1) Requests for permanent staffing of day, night, swing, or graveyard shifts must be made in writing at least seven business days prior to the shift(s) that are requested.

(a) Requests for permanent staffing of any night, swing or graveyard shift will be deemed to include a request for permanent staffing of the day shift.

(b) The requested shift(s) will be established if the department has an adequate number of trained personnel.

(c) Confirmation of staffing requirements must be received by the inspection office by 2:00 p.m. each business day ~~((Monday through Friday))~~ for the next service day, ~~((and))~~ including requests for weekend days, for Mondays, or for holidays, which must be requested by 2:00 p.m. ~~((of))~~ on the last business day ~~((before a Saturday, Sunday, or holiday))~~ of the week (see WAC 16-240-034).

(d) Failure to meet the notification requirement may result in denial of service.

(2) When the department is able to staff the permanent night, swing, or graveyard shift(s) requested by the applicant, the overtime rate established under WAC 16-240-048 will be waived for the requested shift(s).

(3) Once established, permanent shifts will continue until canceled by the requesting party or canceled by the department for good cause.

(a) Cancellation requests must be received, in writing, giving at least fifteen business days' notice.

(b) Applicants will be ~~((assessed))~~ charged for any shifts established at their request until the cancellation notice period has expired.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-038 Revenue minimum determination.

The circumstances under which the department (~~((assesses additional charges))~~) adjusts rates to meet the revenue minimum are as follows:

(1) When the daily volume of work at a service location at the established fees does not generate revenue at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum, except as provided in subsection (2) of this section.

(2) The daily revenue minimum (~~((assessment))~~) charge applies only to the (~~((regular))~~) Tier 1 metric tonnage rate shown in WAC 16-240-070 (2)(b) at USGSA Table 1 ((of this schedule)) and in WAC 16-240-080 (2)(b) at AMA Table 1. When (~~((the alternate))~~) either a Tier 2 or Tier 3 rate is in effect (WAC 16-240-043 (~~((and))~~), 16-240-070, and 16-240-080), export locations will not be subject to daily revenue minimum (~~((assessments for the balance of the alternate))~~) charges during the Tier 2 or Tier 3 rate period allowed under WAC 16-240-043.

(3) Work volume daily averaging at export locations will be determined as follows:

(a) When the daily volume of work at a service location at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, the department will charge((s)) an additional fee, except as ((described)) provided in subsection (~~((+))~~) (2) of this section.

(b) The straight time hourly rate will be (~~((assessed))~~) charged per hour, per employee.

(c) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under daily averaging.

(4) Work volume monthly averaging at export locations will be determined as follows:

(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volume of work.

(b) Under this subsection (4), and except for when the work volume monthly averaging for the revenue minimum is determined under (a) of this subsection, when the monthly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, ((the department charges an additional fee, as described in subsection (1) of this section)) according to the staffing needs at the facility, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum for each month during which work volume monthly averaging applies. As provided under (f) of this subsection, this revenue minimum adjustment applies only during any month when Tier 1 rates are in effect.

(c) At export locations, the request for monthly averaging stays in effect until canceled.

(d) An applicant's written request to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.

(e) Service cancellation fees under WAC 16-240-054 are not considered to be revenue under monthly averaging.

(f) The monthly revenue minimum (~~((assessment))~~) charge applies only to the (~~((standard monthly tonnage))~~) Tier 1 rate shown in USGSA Table 1 under WAC 16-240-070 (2)(b) and AMA Table 1 under WAC 16-240-080 (2)(b) of this schedule. When either the ((alternate)) Tier 2 or Tier 3 rate is in effect, export locations will not be subject to daily revenue minimum (~~((assessments))~~) charges during the (~~((alternate))~~) Tier 2 or Tier 3 rate period allowed under WAC 16-240-043.

(i) Upon the applicant's written notification to the department, the monthly revenue minimum will not be applied to the month in which an export facility resumes operations after an extended downtime. This exception for maintenance or repair is available once per fiscal year.

(ii) When the department provides services at a nonexport location or a transloading facility, and the hourly, unit, and applicable travel fees do not cover the cost of providing the service, (~~((an))~~) a sufficient additional amount ((at least equal to the straight time hourly rate per hour, per employee,)) calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-039 USDA, GIPSA, FGIS administrative fee. The United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service (~~((assesses))~~) charges a per metric ton administrative fee for export and other grain handled by facilities in the Washington state department of agriculture service area.

(1) Washington state department of agriculture will invoice and collect GIPSA's administrative fee at the current GIPSA tonnage calculation or charge on behalf of GIPSA and will pass through the (~~((assessment))~~) fee to GIPSA, FGIS.

(2) Washington state department of agriculture will (~~((assess))~~) charge the federal fiscal year administrative (~~((rate))~~) fee established by GIPSA, FGIS under the guidelines established by GIPSA for collecting the fee.

~~((3) The fee assessments under this chapter do not include the GIPSA assessment.))~~

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-040 Official commercial inspection services. The department may provide on-site official commercial inspection services, at the applicant's request, when all of the following conditions are met:

(1) As applicable under 7 C.F.R. § 800.46, appropriate space and security must be provided by the applicant.

(2) The applicant must provide a written document fully describing the services requested (~~(The applicant must fully describe the requested services in writing)~~) so the department can determine appropriate staffing levels and develop a guarantee of expenses proposal.

(3) The department must be able to provide appropriate licensed personnel to accomplish the service requested.

(4) An adequate provision for fees is negotiated.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-042 Payment of fees and charges. (1)

All department fees and charges for services rendered are due within thirty days of the statement date. Interest at the rate of one percent per month, or fraction thereof, shall accrue on any balance owed after thirty days of the statement date.

(2) If the department does not receive payment within thirty days:

(a) (~~(Services may be withheld)~~) The department may withhold services until the delinquent account is paid; (~~(or)~~) and

(b) (~~(Cash payment)~~) The department may require the customer to prepay for subsequent services (~~(may be required)~~).

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-043 Minimum operating fund balance fee adjustment. The department shall establish the minimum operating fund balance amount on the first business day of July each year.

(1) At (~~(that)~~) the time the minimum operating fund balance amount is established, if the fund balance is above the new minimum operating fund balance amount by at least ten percent, the metric ton vessel rate and the approved automated weighing system rate per metric ton under WAC 16-240-070 (2)(b) at USGSA Table 1 shall be the (~~(alternate fee)~~) next lower tier rate beginning August 1st of that year, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 (2)(b) at AMA Table 1 shall be the (~~(alternate fee)~~) next lower tier rate beginning August 1st of that year.

(2) At (~~(that)~~) the time the minimum operating fund balance amount is established, if the (~~(minimum)~~) fund balance is below the new minimum operating fund balance by at least ten percent, the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-070 (2)(b) at USGSA Table 1 shall be the (~~(standard fee)~~) next higher tier rate beginning August 1st of that year, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 (2)(b) at AMA Table 1 shall be the (~~(standard fee)~~) next higher tier rate beginning August 1st of that year.

(3) If after three months at the Tier 2 rate the fund balance is not reduced to or projected by the department to achieve reduction to the minimum operating fund balance within the following six months, the metric ton vessel rate and approved automated weighing system rate per metric ton under WAC 16-240-070 (2)(b) at USGSA Table 1 shall be

the Tier 3 rate beginning the first day of the following month, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 (2)(b) at AMA Table 1 shall be the Tier 3 rate beginning the first day of the following month.

(4) The department may review the status of the minimum operating fund balance any month during each fiscal year. On the first business day of the month following such review, if the fund balance is above the minimum operating balance by at least ten percent, the (~~(alternate fee rate established or to be established under subsection (1) of)~~) next lower tier rate under this section shall apply. If the fund balance is below the minimum operating fund balance by at least ten percent, the (~~(standard fee rate established or to be established under subsection (2) of)~~) next higher tier rate under this section shall apply. Any change in the (~~(fee)~~) rates required under this subsection shall take effect beginning the first day of the following month. The department shall give notice of any rate change as provided under subsection (5) of this section.

(~~(4)~~) (5) The department shall post notice of each year's current minimum operating fund balance amount on the department's WSDAgrades.com web site within three business days of the date in July when that amount is established under this section.

(~~(5)~~) (6) The department shall post notice of the (~~(fee)~~) rates established under subsection (1) (~~(, (2), or (3))~~) through (4) of this section on the department's WSDAgrades.com web site within three business days of the date the department determines the (~~(fee)~~) rates. The posted notice shall identify the (~~(fee)~~) rate for each affected category of service and the date each (~~(fee)~~) rate takes effect. Notice is not required to be posted when an established (~~(fee)~~) rate does not change following review under (~~(subsection (3) of)~~) this section.

(~~(6)~~) (7) By email or other means, the department may provide optional additional notice to current customers and to any other interested persons of the minimum operating fund balance established under this section and notice of any (~~(fee)~~) rates established or changed under subsections (1) through (~~(3)~~) (4) of this section. Such optional additional notice should be given within the same times as the required notices under subsections (~~(4) and~~) (5) and (6) of this section. This subsection (~~(6)~~) (7) shall not affect the validity of any (~~(fee)~~) rates established or changed under this section.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-044 GIPSA, FGIS scale authorization.

The United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service (USDA, GIPSA, FGIS) has delegated official scale testing and scale authorization authority to the department.

(1) The GIPSA, FGIS scale authorization fee established in WAC 16-240-060, per hour, per employee is (~~(assessed)~~) charged when GIPSA, FGIS scale authorization services are performed.

(2) In addition to the hourly GIPSA, FGIS scale authorization fee; the department may (~~(assess)~~) charge travel time

at the scale authorization hourly rate, mileage beyond ten miles from the scale specialist's assigned office location, per diem, or overtime, if applicable.

(3) All scales in Washington state under USDA, GIPSA, FGIS jurisdiction must comply with the following testing requirements:

(a) Scales must be tested and certified for accuracy at least twice each year by an authorized Washington state department of agriculture scale specialist or a USDA, GIPSA, FGIS scale specialist.

(b) When tested by the department or by USDA, GIPSA, FGIS, a seal must be placed on the scales. This seal must be dated and must indicate approval or rejection.

(c) When scales are tested, copies of the test report must be:

- (i) Forwarded to USDA, GIPSA, FGIS;
- (ii) Maintained by the department; and
- (iii) Maintained at the facility where the scale is located.

(4) The scale authorization fee is ~~((assessed))~~ charged in one-half hour increments.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-046 Straight time rate. The department will charge the straight time hourly rate ~~((is assessed))~~ per hour, per employee, including applicable supervisory and clerical employee hours, as cited below.

(1) An hourly ~~((fee))~~ rate is specified in the schedule of fees adopted under this chapter.

(2) No other straight time hourly rate is established in the schedule of fees under this chapter.

(3) The revenue minimum under WAC 16-240-038 ~~((applies))~~ may apply.

~~((3))~~ (4) No contractual agreement supersedes the straight time rate other than for official commercial inspection services provided under WAC 16-240-040.

~~((4) Straight))~~ (5) The straight time hourly rate is ~~((assessed))~~ charged in one-half hour increments.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-048 Rates for working outside established business hours (overtime). In addition to regular inspection and weighing fees and any applicable hourly ~~((fees))~~ rate, the department will charge the overtime rate per hour, per employee, including applicable supervisory and clerical employee hours, when a service is requested:

- (1) Anytime on Saturdays, Sundays, or holidays.
- (2) Before or after regularly scheduled office hours, Monday through Friday, except as provided in WAC 16-240-036 for an established permanent staffing request.
- (3) During established meal periods on any shift.
- (4) For services requested at unstaffed export locations.
- (5) Overtime is ~~((assessed))~~ charged in one-half hour increments.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-050 Calculating travel time, mileage and per diem. The rules for ~~((assessing))~~ charging travel time, mileage, and per diem are as follows:

(1) Travel time: When department personnel perform services at locations other than service points, the applicant, in addition to the fee for the service performed, must pay the department for travel time as follows:

(a) Travel time for each department employee from the established service location to the inspection point and return at the hourly rates in effect at the time the service is performed; except

(b) Travel time for scale authorization is charged from the scale specialist's assigned office location to the scale location and return at the hourly scale authorization rate shown in WAC 16-240-060, USGSA—AMA—WSDA Table 1.

(2) Mileage: Mileage will be ~~((assessed))~~ charged to inspection locations beyond ten miles from a service point location. Mileage will be ~~((assessed))~~ charged from the service point location to the inspection point and return.

(a) For scale authorization services on scales located beyond ten miles from the scale specialist's assigned office location, mileage will be ~~((assessed))~~ charged from the scale specialist's assigned office location to the scale location and return.

(b) Mileage will be prorated among applicants when multiple service stops can be scheduled during a single service trip.

(c) The mileage rate is ~~((assessed))~~ charged according to the state of Washington office of financial management private vehicle mileage reimbursement rate in effect at the time the service is performed.

(3) Per diem: Per diem may be ~~((assessed))~~ charged when an employee is required to travel to provide services. The charge will be at the rate established by the state of Washington office of financial management that is in effect at the time the service is performed.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-052 Fees for stowage examination. (1) The following rules apply for fees for stowage examination services on vessels or ocean-going barges.

(a) At anchor stowage examination services will be conducted at the convenience of the designated grain inspection office during daylight hours under safe working and weather conditions.

(b) The applicant is responsible for securing licensed tug or water taxi to provide safe transportation to and from the anchor point.

(c) Two vessel or ship's agent representatives will accompany each WSDA inspector performing stowage examination services.

(d) In addition to the fee in USGSA Table ~~((7))~~ 8 under WAC 16-240-070 (2)(b), the department may ~~((assess))~~ charge, as applicable, the following fees:

■ WAC 16-240-048 (rates outside of established business hours);

- WAC 16-240-050 (travel, mileage beyond ten miles, per diem);

- WAC 16-240-054 (service cancellation fee).

(2) The following rules apply for fees for other stowage examination services:

(a) Fees for stowage examination services will not be ~~((assessed))~~ charged when official sampling and inspection occurs at the time of loading or when official check loading is performed, unless the applicant requests an official stowage examination certificate.

(b) The stowage examination requirement associated with service at the time of loading may be waived in accordance with GIPSA, FGIS Directive 9020.1, available from United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.

(c) The applicant is responsible for assuring stowage space is readily accessible to inspection personnel.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-054 Service cancellation fee. A service cancellation fee applies when service is requested and then canceled.

(1) When an applicant requests a shift to provide service before or after the inspection office's established hours, a cancellation fee applies as follows:

(a) When a service is requested before or after an office's standard Monday through Friday shifts, or anytime on Saturdays, Sundays, or holidays; and

(b) The requested service is canceled after 2:00 p.m. of the last business day before the requested service; then

(c) A service cancellation fee according to WAC 16-240-060, Table 1, will be ~~((assessed))~~ charged per employee scheduled.

(2) When service is requested for a vessel inspection, a cancellation fee applies as follows:

(a) When a vessel inspection is requested and then canceled after 2:00 p.m. of the last business day before the requested service; and

(b) The service cancellation fee will be ~~((assessed))~~ charged per employee scheduled to inspect the vessel.

(3) When a facility has an approved permanent staffing request letter in place for the day, night, swing, or graveyard shift, the department waives the cancellation fee for the permanently staffed shift.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-060 WSDA grain program hourly rates, fees and cancellation fees. USGSA—AMA—WSDA Table 1 contains fees for GIPSA, FGIS scale authorization, straight-time hourly rate, overtime hourly rate, and service cancellation fees for services performed under the United States Grain Standards Act, the Agricultural Marketing Act of 1946, and Washington state rule.

**USGSA—AMA—WSDA Table 1
WSDA Grain Program Hourly Rates, Fees and Cancellation Fees**

1. Scale authorization fee, per hour, per employee	\$56.00
2. Straight-time rate, ((rate)) per hour, per employee	\$56.00
3. Overtime rate established under WAC 16-240-048, per hour, per employee	\$28.00
4. Service cancellation fee, per employee	\$200.00

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-070 Fees for services under the United States Grain Standards Act. (1) USGSA Tables 1 through ~~((7))~~ (8) in this section contain fees for official sampling, inspection, weighing services, and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the applicant for service to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

**USGSA Table 1
Fees for Combination Inspection and Weighing Services**

1. In, out, or local, ((standard)) rate for all tiers, per metric ton	\$0.250
2. Vessels (export and domestic ocean-going), ((standard)) Tier 1 rate, per metric ton	\$0.250
3. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, ((standard)) Tier 1 rate, per metric ton	\$0.230

Note: For automated weighing systems:

- When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060.

4.	Vessels and local (export and domestic ocean-going), ((alternate)) Tier 2 rate, per metric ton	\$0.200
5.	Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100
Note: For vessels (export and domestic ocean-going):		
■	The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee.	
■	The metric ton vessel rate includes all official ship samples required by the load order.	
■	Stress crack analysis in corn is included in the fees in USGSA Table 1.	
■	During vessel loading, ((assessments)) fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be ((assessed)) charged at the per unit rates included under this chapter.	
((5-)) 6.	Trucks or containers, per truck or container	\$25.00
((6-)) 7.	Additional nongrade determining factor analysis, per factor	\$3.00

**USGSA Table 2
Fees for Official Sampling and Inspection Without Weighing Services**

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, per truck or container	\$20.00
2.	<u>Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton</u>	<u>\$0.10</u>
3.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, per railcar	\$20.00
((3-)) 4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, per railcar	\$20.00
((4-)) 5.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	\$30.00

Note: The following applies to all fees in this table:		
■	For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 2.	
■	Stress crack analysis in corn is included in the fees in USGSA Table 2.	
■	Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter.	
■	The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade.	
((5-)) 6.	Inspection of bagged grain, including tote bags, per hundredweight (cwt)	\$0.100
((6-)) 7.	Additional nongrade determining factor analysis, per factor	\$3.00

**USGSA Table 3
Fees for Official Class X Weighing Services Without an Inspection of Bulk Grain**

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00

**USGSA Table 4
Fees for Inspection of Submitted Samples, Fees for Reinspections Based on Official File Samples and Fees for Additional Factors**

1.	Submitted samples, including factor-only inspections, per inspection	\$12.00
2.	Reinspections based on official file sample, including factor-only reinspections, per inspection	\$12.00
3.	Additional, nongrade determining factor analysis, per factor	\$3.00
4.	Stress crack only analysis on corn, per sample	\$9.00
Note: The following applies to all fees in this table:		
■	When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above.	
■	For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4.	
■	Stress crack analysis in corn is included in the fees in USGSA Table 4.	
■	Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter.	

**USGSA Table 5
Fees for Miscellaneous Services**

1. Laboratory analysis, at cost	At cost
2. All other USGSA services not listed in this section, per hour, per employee	\$56.00
Note: The following applies to all fees in this table:	
<ul style="list-style-type: none"> ■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department. 	

**USGSA Table 6
Fees for Official Analysis for Protein, Oil, or Other Official Constituents**

Original or reinspection based on file sample, per test	\$9.00
Note: The following applies to the fee in USGSA Table ((5)) 6:	
<ul style="list-style-type: none"> ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be ((assessed)) charged. ■ Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately. 	

**USGSA Table ((6)) 7
Fees for Testing for the Presence of Mycotoxins Using USDA Approved Methods**

Original, reinspection based on official file sample, or submitted sample, per test	\$40.00
Note: The following applies to this table:	
<ul style="list-style-type: none"> ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be ((assessed)) charged in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2). 	

**USGSA Table ((7)) 8
Fees for Stowage Examination Services on Vessels or Ocean-Going Barges and Fees for Other Stowage Examination Services**

1. Vessels or ocean-going barges stowage examination, original or reinspection, per request	\$500.00
2. Other stowage examinations of rail-cars, trucks, trailers, or containers, original or reinspection, per inspection	\$9.00

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946. (1) AMA Tables 1 through

5 in this section contain official sampling ((and/or)), inspection ((and/or)), or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 ((and/or)) or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies ((and/or)) or equipment when requesting a new or special type of analysis.

**AMA Table 1
Fees for Combination Sampling, Inspection and Weighing Services, and Additional Factors**

1. In, out, or local, ((standard)) rate for all tiers, per metric ton	\$0.250
2. Vessels (export or domestic), ((standard)) Tier 1 rate, per metric ton	\$0.250
3. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, ((standard)) Tier 1 rate, per metric ton	\$0.230
Note: For automated weighing systems:	
<ul style="list-style-type: none"> ■ When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060. 	
4. Vessels and local (export and domestic ocean-going), ((alternate)) Tier 2 rate, per metric ton	\$0.200
5. Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100
Note: For vessels (export and domestic ocean-going):	
<ul style="list-style-type: none"> ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. ■ The metric ton vessel rate includes all official ship samples required by the load order. ■ During vessel loading, ((assessments)) fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be ((assessed)) charged at the per unit rates included under this chapter. 	
((5-)) 6. Trucks or containers, per truck or container	\$30.00

((6-)) 7.	Additional, nongrade determining factor analysis, per factor	\$3.00
Note: The following applies to all fees in this table:		
<ul style="list-style-type: none"> ■ The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, or other applicant requested criteria. ■ Dockage breakdown is included in the basic inspection fee. ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. ■ ((Assessments)) Fees for other tests, such as mycotoxin analysis, provided during vessel loading will be ((assessed)) <u>charged</u> at the per unit rates included in this fee schedule. 		

AMA Table 2

Fees for Official Sampling and Inspection Without Weighing Services, and Additional Factors

1.	Trucks or containers sampled by USDA approved grain probe, including factor only or sampling only services, per truck or container	\$30.00
2.	<u>Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton</u>	\$0.10
((2-)) 3.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, per railcar	\$30.00
((3-)) 4.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	\$30.00
((4-)) 5.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, per hundredweight (cwt)	\$0.100
((5-)) 6.	Additional, nongrade determining factor analysis, per factor	\$3.00
Note: The following applies to all fees in this table:		
<ul style="list-style-type: none"> ■ Dockage breakdown is included in the basic inspection fee. ■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. 		

■ The rates shown above also apply to services provided under federal criteria inspection instructions.

AMA Table 3

Fees for Official Weighing Services without Inspections

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00

AMA Table 4

Fees for Inspecting Submitted Samples

1.	Submitted sample, thresher run or processed, including factor-only inspections, per sample	\$20.00
2.	Additional, nongrade determining factor analysis, per factor	\$3.00

Note: The following applies to all fees in this table:

- Dockage breakdown is included in the basic inspection fee.
- Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.
- The rates shown above also apply to inspection services provided under federal criteria inspection instructions.
- When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant.

AMA Table 5

Fees for Miscellaneous Services

1.	Falling number determinations, including liquefaction number on request, per determination	\$20.00
2.	Sampling and handling of processed commodities, per hour, per employee	\$56.00
3.	Laboratory analysis, at cost	At cost

Note: The following applies to all fees in this table:

- On request, shipping arrangements billed directly by **shipper** to the customer's shipping account may be coordinated by the department.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-090 Fees for other services performed by WSDA. (1) WSDA Tables 1 through 3 in this section contain fees for other services performed at the request of the applicant when no USGSA or AMA standards exist. Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Applicant-defined analysis may be available from the department.

(a) Hourly fees for sampling (~~(and/or)~~) or sample preparation may be (~~(assessed)~~) charged.

(b) The analysis will be provided at the established hourly rate or may be provided at the cost quoted by the laboratory or organization providing the service or analysis.

(c) Applicant may be required to provide supplies and equipment when requesting a new analysis or special service.

(3) Official samples, as defined under 7 C.F.R. 800.75, may be provided upon timely request by an interested party, specifying the number of samples requested. Samples are provided in up to five pound bags and are charged the fee stated in Table 3.

WSDA Table 1

Fees for Inspecting Miscellaneous Agricultural Commodities under Chapter 16-213 WAC

1.	Submitted sample, per sample	\$12.00
2.	Railcars, sampled by USDA approved diverter-type mechanical samplers, per car	\$20.00
3.	Railcars, sampled by USDA approved grain probe, per car	\$30.00
4.	Trucks or containers, sampled by USDA approved grain probe, per truck or container	\$20.00
Note: The following applies to all fees in this table:		
■	These rates also apply to inspection services provided under applicant-specified criteria or standards other than USGSA, AMA or WSDA. For example: Millet may be inspected under state of Montana standards, upon applicant request.	

WSDA Table 2

Fees for Phytosanitary Certification

1.	In conjunction with official inspection, per certificate	\$30.00
2.	For phytosanitary certification only, without official inspection, add required sampling time, per hour, per employee	\$56.00

WSDA Table 3

Fees for Miscellaneous Services

1.	Unofficial constituent analysis, per test	\$9.00
2.	Sample pick-up fee, on department established routes, per sample	\$1.25
3.	Laboratory analysis, provided at other than WSDA grain inspection program offices, per analysis	At cost
4.	Official samples, per bag	\$5.00

WSR 17-19-057

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed September 13, 2017, 1:14 p.m., effective October 14, 2017]

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

Purpose: Establish documentation requirements and the baseline generation methodology for incremental generation from qualified biomass energy facilities, consistent with the requirements of chapter 315, Laws of 2017 (ESB 5128).

Citation of Rules Affected by this Order: Amending WAC 194-37-135.

Statutory Authority for Adoption: RCW 19.285.080(2).

Adopted under notice filed as WSR 17-16-103 on July 28, 2017.

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 the Request of a Non-governmental 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 13, 2017.

Brian Bonlender
Director

AMENDATORY SECTION (Amending WSR 14-04-015, filed 1/24/14, effective 2/24/14)

WAC 194-37-135 Documentation of multifuel biomass energy (~~(and)~~), qualified biomass energy, and incremental biomass energy. (1) **Multifuel biomass energy.** A utility using biomass energy produced by a multifuel generating facility, where the biomass energy fuel provides less than ninety-eight percent of the total heat input, must document the eligible renewable energy using RECs created by WREGIS pursuant to the multifuel generating unit procedures of WREGIS.

(2) **Qualified biomass energy.** A utility using qualified biomass energy must document the eligible renewable energy using RECs created by WREGIS and must document:

(a) Information about the facility generating electricity from biomass energy:

(i) Ownership of the biomass energy facility;

(ii) Date of commercial operation of the biomass energy facility; and

(iii) Specific type of biomass used for generation by the biomass energy facility.

(b) Information about the industrial facility that hosts the biomass energy facility:

(i) The utility's load in megawatt hours that results from serving the industrial facility;

(ii) Evidence that the industrial facility had not ceased operation, other than for purposes of maintenance or upgrade, during the target year;

(iii) Evidence that the industrial facility engages in industrial pulping or wood manufacturing; and

(iv) If the facility generating electricity from biomass energy is not owned by the utility, evidence that the industrial facility owns the biomass energy facility and is directly interconnected with the electricity facilities that are owned by the utility and capable of carrying electricity at transmission voltage.

(3) Incremental biomass energy.

(a) A utility using incremental electricity produced as a result of a capital investment at a qualified biomass energy facility must document the eligible renewable energy using RECs created by WREGIS and must document:

(i) The status of the generating facility as a qualified biomass energy facility as provided in subsection (2) of this section;

(ii) Evidence of the quantity, in megawatt hours, of renewable energy electric power generation during the baseline period, which must be determined using the methodology provided in (b) of this subsection;

(iii) Evidence of the nature and amount of the capital investment, demonstrating that the capital investment project was completed after January 1, 2010, and that the expenditure was not on operation and maintenance in the normal course of business;

(iv) Evidence demonstrating that the incremental generation was a result of the capital investment; and

(v) The method or procedures that the facility owner uses to measure or calculate incremental generation and to track incremental generation within WREGIS separately from qualified biomass energy produced by the facility.

(b) Methodology for establishing baseline generation.

(i) The baseline level of generation for determining incremental generation must be established as the average quantity of net generation using eligible renewable energy fuel sources during the most recent three consecutive years of operation prior to the effect of the first capital investment completed after January 1, 2010. The three-year period must begin on or after January 1, 2007. Subsequent capital investments that result in additional amounts of incremental generation do not require a new baseline determination.

(ii) The baseline period must exclude any periods in which operation of the qualified biomass generation facility was unrepresentative of normal operating conditions.

(iii) Baseline generation must be documented using plant-level reports of net generation by fuel type submitted to the U.S. Energy Information Administration or, if such reports are not available, by business records of the generation facility owner.

WSR 17-19-058

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed September 13, 2017, 1:14 p.m., effective October 14, 2017]

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

Purpose: To incorporate amendments made with the passage of SSB 5675, chapter 69, Laws of 2017, amending elements of the statutes authorizing the small business retirement marketplace. Commerce intends to update the rules in chapter 365-65 WAC in order to incorporate these amendments. The anticipated effects of the rule will be the effective operation of the marketplace.

Citation of Rules Affected by this Order: Amending WAC 365-65-060 Approval of verified plans and 365-65-080 Limits on fees.

Statutory Authority for Adoption: RCW 43.330.730-[43.330].750; SSB 5675, chapter 69, Laws of 2017.

Adopted under notice filed as WSR 17-15-124 on July 19, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 365-65-080, additional language regarding displaying de minimis fees on the marketplace web site was added in response to commenter concerns that consumers be made abundantly aware of fees. In addition, a subsection providing for a point-in-time evaluation of the need for de minimis fees was added in response to commenter concerns about limits on fees, the impacts of fees on enrollees' account balances, and the future management of the small business retirement marketplace.

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

Number of Sections Adopted at the Request of a Non-governmental 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, 2017.

Brian Bonlender
Director

AMENDATORY SECTION (Amending WSR 16-12-029, filed 5/23/16, effective 6/23/16)

WAC 365-65-060 Approval of verified plans. (1) The department will approve a diverse array of verified plan options to be offered in the marketplace, including but not limited to:

(a) Life insurance plans or annuities that are designed for retirement purposes;

(b) Plans for eligible employer participation such as a ((A)) SIMPLE-IRA type of plan that provides for employer contributions to participant accounts; and

(c) A payroll deduction individual retirement account or individual retirement annuity, or a workplace based individual retirement account open to all workers to which the employer does not contribute.

(2) The department will approve the myRA retirement program to be offered in the marketplace.

(3) A verified plan that is proposed to be offered in the marketplace must be submitted to the department for review and approval, including all documentation, in a form prescribed by the department.

(4) A verified plan that is proposed to be offered in the marketplace must comply with applicable laws and rules, ~~((included))~~ including but not limited to federal tax laws.

AMENDATORY SECTION (Amending WSR 16-12-029, filed 5/23/16, effective 6/23/16)

WAC 365-65-080 Limits on fees. (1) A verified financial services firm that offers approved plans in the marketplace may not charge participating employers an administrative fee, and may not charge enrollees more than one hundred basis points in total annual fees.

(2) As an exception to the aforementioned limit on fees, financial services firms may charge retirement plan enrollees a de minimis fee for new and/or low balance accounts in amounts, and for durations, negotiated and agreed upon by the department and the verified financial services firm, as follows:

(a) A financial services firm that intends to negotiate a de minimis fee for retirement plan enrollees with new and/or low balance accounts must contact the department with a request to enter into negotiations.

(b) A de minimis fee must be negotiated with the department and established as an agreement through a contractual instrument to be specified by the department. Once established, a de minimis fee must be evidenced in the plan agreement provided to enrollees. The agreed upon de minimis fee will be displayed on the product comparison and product detail pages of the marketplace website.

(c) The director must limit plans to those with total fees the director considers reasonable based on all the facts and circumstances, including but not limited to:

(i) The primary mission to increase access to low-cost and low-barrier retirement savings plans for small businesses and their employees;

(ii) The goal of bringing new savers into retirement plans;

(iii) The market conditions faced by financial services firms to establish and service retirement savings plans for enrollees with new and/or low-balance accounts;

(iv) The goal of maintaining and improving fee transparency and simplicity; and/or

(v) Attempts on the part of the financial services firm to arrive at a low cost fee arrangement without charging a de minimis fee.

(d) Once a de minimis fee has been agreed upon by the department and the financial services firm, the financial ser-

vices firm must supply a copy of the executed agreement to the department of financial institutions.

(e) Any changes to an agreed upon de minimis fee must be negotiated and agreed upon with the department prior to submission of an amended application for verification with the department of financial institutions.

(f) No later than September 2020, the department will evaluate the ongoing need to allow de minimis fees to be charged to enrollees.

WSR 17-19-073

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Financial Services Administration)

[Filed September 15, 2017, 10:13 a.m., effective October 16, 2017]

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

Purpose: RCW 9.97.020 (4)(a) mandates rule making by the department regarding the inclusion of certificates of restoration of opportunity (CROP) as part of reports, letters, or other assessments, and the application of a CROP to the state abuse and neglect registries. The rules add language to explain when a CROP will be a part of such assessments and when they are not required, and clarify and update the definitions related to the background check central unit of the department and its processes.

Citation of Rules Affected by this Order: New WAC 388-06-0800 and 388-06-0810; and amending WAC 388-06-0700.

Statutory Authority for Adoption: RCW 9.97.020.

Adopted under notice filed as WSR 17-15-037 on July 11, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-06-0700, added definition of "data sources" to clarify which sources are used, and where more information may be found.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 12, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0700 What definitions apply to WAC ((388-06-0710)) 388-06-0700 through ((388-06-0720)) 388-06-0810? The following definitions apply to WAC 388-06-0700 through 388-06-0810:

"Applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor, or other individual who is the subject of the background check and who will work in a position that:

(1) May have unsupervised access to vulnerable adults, the developmentally disabled, juveniles, or children; or

(2) Is designated by the department as having access to sensitive information.

"Authorized entity" means a department ((of social and health services)), administration, division, program, unit, service provider, licensee, contractor, or other public or private ((agency)) entity that has permission from the department to ((conduct)) submit and receive background checks through ((the background check central unit)) BCCU.

"Background check applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor or other individual who is the subject of the background check and who will work in a position that:

(1) May have unsupervised access to vulnerable adults, juveniles or children as described in WAC 388-06-0610; or

(2) Is designated by the department as a sensitive position.

"Background check central unit" or "BCCU" is the program responsible for conducting background checks for the department ((of social and health services)).

(1) ((The background check central unit)) BCCU is responsible for:

(a) Compiling background check information from external and internal data sources; ((and))

(b) Determining whether an applicant's background check information matches to the appropriate department list of disqualifying crimes and negative actions; and

(c) Providing information to the authorized entity who requested the background check.

(2) ((The background check central unit)) BCCU does not:

(a) Make the final hiring, contracting, placement, or licensing decision for the department or authorized entity; ((or))

(b) Determine what program, service provider, licensee, contractor, or other public or private agency qualifies as an authorized entity; or

(c) Determine what crimes and negative actions are disqualifying under the respective department lists.

"Background check result" means a written notification that provides information on the results of the background check process conducted for an applicant. The following are all background check results:

(1) "Disqualify result" means that BCCU has determined that the applicant's background check information has one or more items requiring automatic disqualification.

(2) "No record result" means that BCCU has determined that no background information has been reported requiring automatic disqualification or review.

(3) "Review required result" means that BCCU has determined that the applicant has one or more items of background check information, none of which require automatic disqualification.

"Certificate of restoration of opportunity" or "CROP" means a certificate obtained under chapter 9.97 RCW.

"Data sources" may include state and federal law enforcement records, state court records, agency databases, or other sources depending on the type of check conducted. More detailed information may be available on the BCCU page of the department's website or by calling the department.

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

NEW SECTION

WAC 388-06-0800 When must BCCU include a statement about a certificate of restoration of opportunity? (1) Except as provided for in subsections (2) through (4) of this section, BCCU must include a statement about any existing CROP in background check results for all applicants that the department is authorized to disqualify for:

(a) A license;

(b) A certificate of authority;

(c) Qualification to engage in the practice of a profession or business; or

(d) Admission to an examination to qualify for such a license or certificate.

(2) BCCU is not required to include a statement about any existing CROP for an applicant who is exempt under chapter 9.97 RCW.

(3) BCCU is not required to include a statement about any existing CROP when BCCU issues any interim communications, including when:

(a) Requesting additional information;

(b) Notifying about an error;

(c) Rejecting a form;

(d) Requesting a thumbprint; or

(e) Any other communication that does not assess the final results of a processed background check.

(4) BCCU is not required to include a statement about any existing CROP in any no record result.

NEW SECTION

WAC 388-06-0810 Does a certificate of restoration of opportunity apply to any state abuse and neglect registry? A CROP does not apply to any state abuse and neglect registry. No finding of abuse, neglect, or misappropriation of property may be removed from such registry based solely on a CROP.

WSR 17-19-077
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Order 2017-01—Filed September 15, 2017, 2:51 p.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: Amends existing rules in Title 182 WAC specific to the public employees benefits board (PEBB) program with the following effect:

1. Implement PEBB policy resolutions to create a definition of "season" as it relates to seasonal employees, amend surviving dependent eligibility requirements to clarify the timing on receiving retirement benefits, amend appointed officials eligibility requirements for retiree benefits, and amend SmartHealth eligibility requirements to incorporate a new wellness incentive.

2. Makes technical amendments to:

- Within chapters 182-08, 182-12, and 182-16 WAC insert "PEBB" or "Public Employees' Benefits Board (PEBB)" in front of the words "insurance coverage" for clarity where it is missing.
- Amend chapters 182-08 and 182-12 WAC where premiums and premium payments are discussed to ensure payment of premium surcharges are also addressed.
- Correcting the reference to Treasury Regulation 26 C.F.R. 54.9801-6 throughout chapters 182-08 and 182-12 WAC.
- Amend the definition of "subscriber" in chapters 182-08, 182-12, and 182-16 WAC so it is clear that they must be determined eligible by HCA and are the individual to whom HCA and contracted vendors will issue all notices.
- Amend the title and structure of WAC 182-08-187 to more accurately reflect content of section and to accurately describe error categories that would necessitate error correction. Also, amending WAC 182-08-187 to incorporate more details regarding under what circumstances and how errors will be corrected retroactively.
- Amend WAC 182-08-196 and 182-08-198 to address how the PEBB program will resolve health plan enrollment when a subscriber has a change in residence and fails to select a new health plan within the required time.
- Amend chapter 182-08 WAC to clarify where life insurance paperwork must be turned in.
- Created new rule within chapter 182-12 WAC regarding the term "appointed official" and survivors of elected state official, full-time appointed state official of the legislative or executive branch of state government. This new rule supports retiree eligibility determinations for this population.
- Amend WAC 182-12-138 to align with WAC 182-08-180 which describes how delinquent payments are handled.
- Amend the structure of the sections of WAC 182-12-142 to make it easier to reference individual subsections.
- Amend chapter 182-12 WAC to incorporate federal COBRA requirements pertaining to continuation coverage.
- Amend WAC 182-12-171 to clarify that substantive eligibility must be established before procedural requirements are considered and to make some minor nontechnical corrections.
- Amend WAC 182-12-260 to eliminate redundancy of state registered domestic partner reference in rule and clarify that dissolution, termination, divorce, annulment or death may be used to describe the termination of a state registered domestic partnership. Also, amending WAC 182-12-260 to clarify that the PEBB program will receive input from the contracted vendor when certifying the eligibility of a dependent child with a disability.
- Amend WAC 182-12-262 to include the timeline for when a subscriber must turn in a disabled dependent recertification form and to reflect that optional employee life insurance for a newborn child does not begin until the child is fourteen days old.
- Amend WAC 182-12-265 to clarify when a surviving spouse must start to receive a retirement benefit to be eligible for PEBB insurance coverage, and add the requirement that eligibility for a non-K-12/educational service districts (ESD) employer group surviving spouse or domestic partner will end at the end of the month when the employer group ends participation with the PEBB program.
- Amend chapter 182-16 WAC to account for former employees and the process required for their appeals.
- Remove the special open enrollment event for a child becoming eligible as a dependent with a disability from WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.
- Amend chapter 182-16 WAC so that life insurance premium payment decision may be appealed with the life insurance contracted vendor.
- Amend chapters 182-08 and 182-12 WAC to update the definition of life insurance to distinguish in rule the difference between life insurance for eligible employees and eligible retirees. The updated definition of life insurance was also added into chapter 182-16 WAC.
- Create a definition of "contracted vendor" within chapters 182-08, 182-12, and 182-16 WAC to provide clarity and consistency in our use of "contracted vendor" in rule.
- Amend the definition of "annual open enrollment" within chapters 182-08 and 182-12 WAC to clarify employees must be eligible to participate in the salary reduction plan.
- Amend WAC 182-12-209 to specify the category of life insurance offered by life insurance vendor.
- Amend WAC 182-12-128 and 182-12-262 to address when coverage begins for the birth or adoption of a child.

Citation of Rules Affected by this Order: Amending chapters 182-08, 182-12, and 182-16 WAC.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: PEBB policy resolutions.

Adopted under notice filed as WSR 17-16-126 on July 31, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, Repealed 0; or

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

Number of Sections Adopted at the Request of a Non-governmental 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 36, 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 36, Repealed 0.

Date Adopted: September 15, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

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. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, or enroll in or waive enrollment in PEBB medical~~(~~or~~)~~. Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), the medical flexible spending arrangement (FSA), or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays~~(~~;~~)~~ and Sundays~~(~~;~~ and all legal holidays as set forth in RCW 1.16.050)~~.

"Continuation coverage" means the temporary continuation of PEBB health plan coverage available to enrollees after a qualifying event occurs as administered under Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020

(13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under ~~(this chapter)~~ RCW 41.05.011 or by the authority under this chapter.

"Employer" means the state of Washington ~~((as defined in RCW 41.05.011)).~~

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the authority by a state agency, employer group, or charter school for its eligible employees as described in WAC 182-12-114 and 182-12-131, and the employee's eligible dependents as described in WAC 182-12-260.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency, employer group, or charter school for employees eligible under WAC 182-12-114 and 182-12-131. It also means basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by school districts or an educational service district.

"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.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or ten percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Large claim" means a claim for more than \$25,000 in allowed costs for services in a quarter.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" for eligible employees includes basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as optional life insurance and optional AD&D insurance offered to and paid for by employees ((on an optional basis, and)) for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Ongoing large claim" means a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than \$25,000 in the quarter.

"PEBB" means the public employees benefits board.

"PEBB 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 insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribu-

tion, due to an enrollee's tobacco use or a subscriber's spouse or state registered domestic partner choosing not to enroll in his or her employer-based group medical when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in PEBB medical ~~(, and)~~. Employees eligible to participate in the salary reduction plan may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government 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))~~ continuation coverage enrollee, or survivor who has been ((designated)) determined eligible by the ~~((HCA as))~~ PEBB program, employer group, state agency, or charter school and is the individual to whom the ((HCA)) PEBB program 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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other employer-based group medical, TRICARE,

or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains another employer-based group health plan as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-08-180 Premium payments and premium refunds. Premiums and applicable premium surcharges 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))~~ (3) or (4).

(1) **Premium payments.** Public employees benefits board (PEBB) insurance coverage premiums and applicable premium surcharges become due the first of the month in which PEBB insurance coverage is effective.

~~((Premium is))~~ Premiums and applicable premium surcharges are due from the subscriber for the entire month of PEBB insurance coverage and will not be prorated during any month.

(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 premiums or applicable premium surcharges must be paid, and are due from the employing agency, subscriber, or a subscriber's legal representative to the health care authority (HCA). A subscriber's monthly premium or premium surcharge that remains unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premium or premium surcharge becomes delinquent to pay the unpaid premium balance or surcharge. If a subscriber's monthly premium or premium surcharge remains unpaid for sixty days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and any premium surcharge was paid. If it is determined by the authority that payment of the unpaid balance in a lump sum would be considered a hardship, the authority may develop a reasonable repayment plan with the subscriber or the subscriber's legal representative upon request.

(c) A monthly premium or premium surcharge due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premium or premium surcharge is received by the authority and the monthly premium or premium surcharge remains unpaid for thirty days; or

(ii) A premium payment or premium surcharge received by the authority is underpaid by an amount greater than an insignificant shortfall and the monthly premium or premium surcharge remains underpaid for thirty days past the date the monthly premium or premium surcharge was due.

(2) **Premium refunds.** PEBB premiums and premium surcharges 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 and premium surcharges paid during the three

month adjustment period, except as indicated in WAC 182-12-148(5).

(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 (~~(division)~~) director, designee, 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 ~~((#))~~ premiums and premium surcharges paid during the time he or she was enrolled under the federal program if approved by the PEBB (~~(division)~~) director or designee.

(d) HCA errors will be corrected by returning all excess premiums and premium surcharges paid by the employing agency, subscriber, or beneficiary.

(e) Employing agency errors will be corrected by returning all excess premiums and premium surcharges paid by the employee or beneficiary.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment? (1) An employing agency (~~(that fails to timely enroll an employee, or his or her dependent, in public employees benefits board (PEBB) benefits)) or contracted vendor that makes one or more of the following enrollment errors~~ must correct the error as described in ~~(this section. An agency must correct a)~~ subsections (2) through (4) of this section.

(a) Failure to timely notify an employee (~~(timely))~~ of his or her eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2); ~~((#-a))~~

(b) Failure to (~~(accurately))~~ enroll the employee and his or her dependents in PEBB insurance coverage as elected by the employee, if the elections were timely; ~~((#-a))~~

(c) Failure to (~~(accurately))~~ enroll PEBB insurance coverage as described in WAC 182-08-197 (1)(b); or ~~((#))~~

(d) Failure to accurately reflect an employee's premium surcharge (~~(status))~~ attestation on the employee's account.

The employing agency or the ~~((PEBB program's designee))~~ applicable contracted vendor must enroll the employee and the employee's dependent, as elected, in PEBB benefits as described in subsection (1) of this section, reconcile premium payments and premium surcharges as described in subsection (2) of this section, and provide recourse as described in subsection (3) of this section.

Note: If the employing agency failed to provide the notice required in WAC 182-12-113 or the employer group contract before the end of the employee's thirty-one day enrollment period described in WAC 182-08-197 (1)(a), the employing agency must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period. Employees who do not return the required enrollment forms (~~(default to enrollment))~~ by the due date required under the new enrollment period must be defaulted according to WAC 182-08-197 (1)(b). This notice requirement does not remove the ability to offer recourse.

~~((#))~~ (2) Enrollment.

(a) PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (3) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life and basic long-term disability (LTD) insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance 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 life and optional LTD insurance is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue optional LTD insurance during the period of leave, optional LTD insurance is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional life insurance and optional LTD insurance under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP), enrollment is limited to three months prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in an FSA or DCAP as elected, the employee may adjust his or her election. The employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect.

~~((#))~~ (3) Premium payments.

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, premium surcharges, basic life, and basic LTD from the date PEBB insurance coverage begins as described in subsections (1) and (3)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of his or her eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and premium surcharges for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of (~~optional life insurance or~~) optional LTD insurance elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When premium refunds are due to the employee, the (~~optional life insurance or~~) optional LTD insurance vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premium refunds.

~~((3))~~ **(4) Recourse.**

(a) Employee 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. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (1) of this section, the employing agency must work with the employee, and receive approval from the authority, to implement retroactive PEBB 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 by the employee or dependent medical and dental premiums; (~~(e)~~)

(iv) Other legal remedy received or offered; or

(v) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for non-covered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-08-196 What happens if my health plan becomes unavailable due to a change in contracted service area or eligibility for medicare? (1) Subscribers must select a new health plan within sixty days of their chosen health plan becoming unavailable due to a change in contracting service area or the subscriber or subscriber's dependent ceasing to be eligible for their current plan because of his or her enrollment in medicare.

(a) Employees must (~~(notify)~~) submit the required form to their employing agency (~~(e)~~) electing their new health plan (~~(election)~~).

(b) All other subscribers must submit the required form to notify the PEBB program (~~(e)~~) electing their new health plan (~~(election)~~).

(c) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received.

(2) The PEBB program will change health plan enrollment as follows if the subscriber fails to select a new health plan as required under subsection (1) of this section:

(a) Employees who fail to select a new health plan within the required time period will be enrolled in a successor plan if one is available or (~~(will be enrolled in a)~~) an existing plan designated by the director.

(b) All other subscribers who fail to select a new health plan within the required time period will be enrolled in a successor plan if one is available or a plan designated by the director.

(3) Any subscriber enrolled in a health plan as described in subsection (2) of this section may not change health plans except as allowed in WAC 182-08-198.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete required forms? An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating his or her enrollment elections, including an election to waive PEBB medical if the employee (~~(chooses)~~) is eligible to waive PEBB medical and elects to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency. Forms must be received by his or her employing agency no later than thirty-one days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in optional life and optional long-term disability (LTD) insurance up to the guaranteed issue without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An employee may apply for enrollment in optional life and optional LTD insurance over the guaranteed issue at any time during the calendar year by submitting the required form to the contracted vendor for approval.

(ii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to his or her state agency. The form must be

received by his or her state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required form to his or her state agency (~~(or the PEBB program's designee)~~). The form must be received by the state agency (~~(or the PEBB program's designee)~~) no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or contracted vendor in the case of life insurance, does not receive the employee's required forms indicating medical, dental, life insurance, and LTD insurance elections, and the employee's tobacco use status attestation within thirty-one days of the employee becoming eligible, his or her enrollment will be as follows for those elections not received within thirty-one days:

- (i) Uniform Medical Plan Classic;
- (ii) Uniform Dental Plan;
- (iii) Basic life insurance;
- (iv) Basic long-term disability insurance;
- (v) Dependents will not be enrolled; and
- (vi) A tobacco use surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB 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 PEBB insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2). PEBB medical and dental begins on the first day of the month the employee is in pay status eight or more hours:

(a) The employee must complete the required forms indicating his or her enrollment elections, including an election to waive PEBB medical if the employee chooses to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency, or life insurance contracted vendor, if required, no later than thirty-one days after the employee regains eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life PEBB insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability effective the first day of the month in which the employee is in pay status eight or more hours;

(ii) An employee who was eligible to continue optional life under continuation coverage but discontinued that PEBB insurance coverage must submit evidence of insurability to the contracted vendor if he or she chooses to reenroll when he or she regains eligibility for the employer contribution;

(iii) An employee who was eligible to continue optional LTD under continuation coverage but discontinued that

PEBB insurance coverage must submit evidence of insurability for optional LTD insurance to the (~~(PEBB designee)~~) contracted vendor when he or she regains eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return a form indicating optional LTD insurance elections. His or her optional LTD insurance will be automatically reinstated effective the first day of the month he or she is in pay status eight or more hours:

(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.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the required forms within thirty-one days of the employee regaining eligibility, medical, dental, life insurance, tobacco use surcharge, and LTD insurance 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 form to his or her state agency (~~(or the PEBB program's designee)~~). The form must be received by the employee's state agency (~~(or the PEBB program's designee)~~) no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or the medical FSA ((~~administrator~~) contracted vendor of his or her employment transfer within the current plan year.

(5) An employee's PEBB insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB coverage. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB insurance coverage elections also remain the same when an employee has a break in employment that does not interrupt his or her employer contribution toward PEBB insurance coverage.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

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. An employee submits the enrollment forms to his or her employing agency. All other subscribers submit the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** 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 Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. 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. An employee submits the enrollment forms to his or her employing agency. All other subscribers submit the enrollment forms to the 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; or

(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 has a change in employment status that affects the subscriber's eligibility for his or her employer contribution toward his or her employer-based group health plan;

(d) The subscriber's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group health plan;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the sub-

scriber 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)).~~);

(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 state 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);

(i) 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 terminates 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);

(j) 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;

(k) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

(ii) Transplant within the last twelve months; or

(iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

(iv) Recent major surgery still within the postoperative period of up to eight weeks; or

(v) Third trimester of pregnancy.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

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 ~~elect to~~ enroll in or (~~change~~) ~~waive~~ his or her (~~election~~) participation under the state's premium payment plan (~~, medical FSA, or DCAP~~) during the annual open enrollment. An eligible employee may elect to enroll in the medical FSA, DCAP, or both during the annual open enrollment. For the state's premium payment plan, the required form must be submitted to his or her employing agency. To enroll or reenroll in medical FSA or DCAP the employee must submit the required form to his or her employing agency or the (~~public employees benefits board (PEBB) program's designee~~) applicable contracted vendor. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

(3) **During a special open enrollment:** An employee who is eligible to participate in the salary reduction plan 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 Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required forms as instructed on the forms. The required 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)~~) 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC (~~(Section)~~) 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** An employee may enroll or change his or her election under the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open

enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership when the dependent is a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

- 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 employee benefits board (PEBB) eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age 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 has a change in employment status that affects the employee's eligibility for his or her employer contribution toward his or her employer-based group health plan;

(v) The employee's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group health plan;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB (~~(program's)~~) annual open enrollment;

(vii) Employee or an employee's dependent has a change in residence that affects health plan availability;

(viii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(ix) 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 state registered domestic partner is not an eligible dependent);

(x) 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;

(xi) 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);

(xii) 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;

(xiii) 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~~) requires evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiv) Employee or an employee's dependent experiences a disruption of care 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 his or her 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.

(xv) Employee or employee's dependent becomes eligible and enrolls in TRICARE, or loses eligibility for TRICARE.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical flexible spending arrangement (FSA).** An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

- 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 state 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 medical 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 state 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 the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- 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 an employer-based group health 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)~~) 26 U.S.C. Sec. 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in (~~Internal Revenue Code Section~~) IRC 26 U.S.C. Sec. 152.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-08-235 Employer group and charter school application process. This section applies to employer groups as defined in WAC 182-08-015 and to charter schools. An employer group or charter school may apply to obtain public employees benefits board (PEBB) insurance coverage through a contract with the health care authority (HCA).

(1) Employer groups and charter schools with less than five (~~thousand~~) hundred employees must apply at least sixty days before the requested coverage effective date. Employer groups and charter schools with five hundred or more employees but with less than five thousand employees must apply at least ninety days before the requested effective date.

Employer groups and charter schools with five thousand or more employees must apply at least one hundred twenty days before the requested coverage effective date. To apply, employer groups and charter schools must submit the documents and information described in subsection (2) of this section to the PEBB program as follows:

(a) School districts, educational service districts, and charter schools are required to provide the documents described in subsections (2)(a) through (c) of this section;

Exception: School districts and educational service districts required by the superintendent of public instruction to purchase PEBB insurance coverage provided by the authority are required to submit documents and information described in subsection (2)(a)(iii), (b), and (c) of this section.

(b) Counties, municipalities, political subdivisions, and tribal governments with fewer than five thousand employees are required to provide the documents and information described in subsection (2)(a) through (f) of this section;

(c) Counties, municipalities, political subdivisions, and tribal governments with five thousand or more employees will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described

in subsection (2)(a) through (d), (f), and (g) of this section; and

(d) All employee organizations representing state civil services employees and the Washington health benefit exchange, regardless of the number of employees, will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a)(i) through (iv) of this subsection:

(i) A reference to the group's authorizing statute;

(ii) A description of the organizational structure of the group and a description of the employee bargaining unit or group of nonrepresented employees for which the group is applying;

(iii) Employer group or charter school tax ID number (TIN); and

(iv) A statement of whether the group is applying to obtain only medical or all available PEBB insurance coverages. School districts and educational service districts must purchase medical, dental, life, and LTD insurance.

(b) A resolution from the group's governing body authorizing the purchase of PEBB insurance coverage.

(c) A signed governmental function attestation document that attests to the fact that employees for whom the group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(d) A member level census file for all of the employees for whom the group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or state registered domestic partner, or child:

(i) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(ii) Age;

(iii) Gender;

(iv) First three digits of the member's zip code based on residence;

(v) Indicator of whether the employee is active or retired, if the group is requesting to include retirees; and

(vi) Indicator of whether the member is enrolled in coverage.

(e) Historical claims and cost information that include the following:

(i) Large claims history for 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) Summary of historical plan costs; and

(iv) The director or designee may make an exception to the claims and cost information requirements based on the size of the group.

Exception: If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(f) If the application is for a subset of the group's employees (e.g., bargaining unit), the group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in (d) of this subsection. This includes retired employees participating under the group's current health plan. The file must include the same demographic data by member.

(g) Employer groups described in subsection (1)(c) and (d) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the PEBB program. The group must pay for the cost of the evaluation. This cost is nonrefundable. A group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

- (i) Large claims history for 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.

Exception: If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-08-245 Employer group and charter school participation requirements. This section applies to an employer group as defined in WAC 182-08-015 or a charter school 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 or charter school must:

- (a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;
- (b) Sign a contract with the authority;
- (c) Determine employee and dependent eligibility and terms of enrollment for PEBB insurance coverage by the criteria outlined in this chapter and chapter 182-12 WAC unless otherwise approved by the authority in the employer group's or charter school's contract with the authority;

(d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the employer group or charter school may only consider employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions to be eligible; and

(e) Ensure PEBB insurance coverage is the only employer-sponsored coverage available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums under its contract with the authority based on the following premium structure:

(a) The premium rate structure for school districts, educational service districts, and charter schools 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 election and family enrollment. School districts and educational service districts must collect an amount equal to the premium surcharges applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow 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 and charter schools described in (a) of this subsection will be a tiered rate based on health plan election and family enrollment. Employer groups must collect an amount equal to the premium surcharges applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) Counties, municipalities, political subdivisions, and tribal governments must pay the monthly employer group rate surcharge in the amount invoiced by the authority.

(4) If an employer group or charter school wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(5) The employer group or charter school must maintain participation in PEBB insurance coverage for at least one full year. An employer group or charter school may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group or charter school must provide written notice to the PEBB program at least sixty days before the requested termination date.

(6) Upon approval to purchase insurance through a contract with the authority, the employer group or charter school must provide a list of employees and dependents that are enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and the remaining number of months available to them based on their qualifying event. These

employees and dependents may enroll in a PEBB health plan as COBRA subscribers for the remainder of the months available to them based on their qualifying event.

(7) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, 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 16-20-080, filed 10/4/16, effective 1/1/17)

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. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, or enroll or waive enrollment in PEBB medical(~~(7-07)~~). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), the medical flexible spending arrangement (FSA), or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays(~~(7)~~) and Sundays(~~(7)~~ and all legal holidays as set forth in RCW 1.16.050).

"Continuation coverage" means the temporary continuation of PEBB health plan coverage available to enrollees after a qualifying event occurs as administered under Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board

of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under ~~((this chapter))~~ RCW 41.05.011 or by the authority under this chapter.

"Employer" means the state of Washington ~~((as defined by RCW 41.05.011))~~.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the authority by a state agency, employer group, or charter school for its eligible employees as described under WAC 182-12-114 and 182-12-131 and the employee's eligible dependents as described in WAC 182-12-260.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency, employer group or charter school for employees eligible in WAC 182-12-114 and 182-12-131. It also means basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by school districts or an educational service district.

"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 medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE which are not employer-based group medical.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"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" for eligible employees includes basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as optional life insurance and optional AD&D insurance offered to and paid for by employees ~~((on an optional basis, and))~~ for themselves and their dependent. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or state registered domestic partner choosing not to enroll in his or her employer-based group medical when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Season" means any recurring annual period of work at a specific time of year that lasts three to eleven consecutive months.

"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. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in PEBB medical(, and). Employees eligible to participate in the salary reductions plan may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government 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))~~ continuation coverage enrollee, or ~~((eligible))~~ survivor who has been ~~((designated))~~ determined eligible by the ~~((HCA as))~~ PEBB program, employer group, state agency, or charter school and is the individual to whom the ~~((HCA))~~ PEBB program 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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other employer-based group medical, TRICARE, or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains another employer-based group health plan as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Employing agencies must request the public employees benefits board (PEBB) program's approval to include temporary training or emergency hours in determining eligibility.

For how the employer contribution toward PEBB insurance coverage is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as described in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if he or she is anticipated to work an average of at least eighty hours per month and is anticipated to work for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection.

tion, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB insurance coverage as described in WAC 182-12-131(1).

(d) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic long-term disability insurance begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(2) **Seasonal employees**, as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if he or she is anticipated to work an average of at least eighty hours per month and is anticipated to work for at least eight hours in each month of at least three consecutive months of the season. ~~((A season is any recurring, cyclical period of work at a specific time of year that lasts three to eleven months.))~~

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that he or she will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB insurance coverage. Employees must notify their employing

agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB insurance coverage as described in WAC 182-12-131(1).

(d) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic long-term disability insurance begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria as described in (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward PEBB insurance coverage by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility as described in WAC 182-12-131(3). When a faculty works for more than one institution of higher education, the faculty must notify his or her employing agencies that he or she works at more than one institution and may be eligible through stacking.

(c) **When PEBB insurance coverage begins.**

(i) Medical, dental, basic life insurance, and basic long-term disability insurance begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical, dental, basic life insurance, and basic long-term disability insurance begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, then PEBB insurance coverage begins at the beginning of the second consecutive quarter/semester.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic long-term disability insurance begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic long-term disability insurance begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may he or she enroll in PEBB medical after having waived enrollment? An employee may waive enrollment in public employees benefits board (PEBB) medical if he or she is enrolled in other employer-based group medical, TRICARE, or medicare. An employee who waives enrollment in PEBB medical must enroll in dental, basic life insurance, and basic long-term disability insurance (unless the employing agency does not participate in these PEBB insurance coverages).

(1) To waive enrollment in PEBB medical, the employee must submit the required form to his or her employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee enrolled in other employer-based group medical, TRICARE, or medicare may waive PEBB medical when he or she becomes eligible for PEBB benefits. The employee must indicate his or her election to waive enrollment in PEBB medical on the required form and submit the form to his or her employing agency. The form must be received by the employing agency no later than thirty-one days after the date

the employee becomes eligible (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** An employee may waive PEBB medical during the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** An employee may waive PEBB medical during a special open enrollment as described in subsection (4) of this section.

The employee must submit the required form to his or her employing agency. The form must be received no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows an employee to change his or her enrollment outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The employee must submit the required form to his or her employing agency. The form must be received no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will begin as follows:

(i) For a newly born child, PEBB medical will begin the date of birth;

(ii) For a newly adopted child, PEBB medical will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

(iii) For an employee enrolling in order to enroll a newly born or newly adopted child, PEBB medical will begin the first day of the month in which the event occurs;

(iv) For the spouse or state registered domestic partner of an employee, PEBB medical will begin the first day of the month in which the event occurs.

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering for a state domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship(~~;~~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 has a change in employment status that affects the employee's eligibility for his or her employer contribution toward his or her employer-based group medical;

(d) The employee's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group medical;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Employee or an employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(f) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(g) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide a health plan for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) 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;

(i) 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);

(j) Employee or employee's dependent becomes eligible and enrolls in TRICARE, or loses eligibility for TRICARE;

(k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-131 How do eligible employees maintain the employer contribution toward public employees benefits board (PEBB) insurance coverage? The employer contribution toward public employees benefits board (PEBB) insurance coverage begins on the day that PEBB benefits begin as described in WAC 182-12-114. This section describes under what circumstances employees maintain eligibility for the employer contribution toward PEBB insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, employees who have established eligibility for benefits as described in WAC 182-12-114 are eligible for the employer contribution each month in which they are in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) Benefits-eligible seasonal employees (eligible as described in WAC 182-12-114(2)) who work a season of less than nine months are eligible for the employer contribution in any month of the season in which they are in pay status eight or more hours during that month. The employer contribution toward PEBB insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) Benefits-eligible seasonal employees (eligible as described in WAC 182-12-114(2)) who work a season of nine months or more are eligible for the employer contribution:

(i) In any month of the season in which they are in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked, but the eligibility may not exceed a total of twelve consecutive calendar months for the combined season and off season.

(3) **Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work half time or more the entire instructional year or equivalent nine-month period (eligible as described in WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible as described in WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which employees work half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible as described in WAC 182-12-114 (3)(a) and (b)) who work an average of half-time or more

throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester PEBB insurance coverage.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester PEBB 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 PEBB insurance coverage after the employee was no longer eligible for the employer contribution, PEBB insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible as described in WAC 182-12-114 (3)(a) and (b)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution toward PEBB 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 as described in WAC 182-12-114 (3)(a) and (b)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

- (i) Employees on authorized leave without pay;

- (ii) Employees on approved educational leave;
- (iii) Employees receiving time-loss benefits under workers' compensation;
- (iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or
- (v) Employees applying for disability retirement.

(5) Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff maintain the employer contribution toward PEBB insurance coverage as described in WAC 182-12-129.

(6) Employees who are in pay status less than eight hours in a month. Unless otherwise indicated in this section, when there is a month in which employees are not in pay status for at least eight hours, employees:

- (a) Lose eligibility for the employer contribution for that month; and
- (b) Must reestablish eligibility for PEBB benefits as described in WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) The employer contribution toward PEBB insurance coverage ends in any one of these circumstances for all employees:

- (a) When employees fail to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.
- (b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:
 - (i) On the date specified in an employee's letter of resignation; or
 - (ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When employees move to a position that is not anticipated to be eligible for PEBB benefits as described in WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB benefits cease for employees and their enrolled dependents the last day of the month in which employees are eligible for the employer contribution under this section.

Exception: If the employing agency deducted the employee's premium for PEBB insurance coverage after the employee was no longer eligible for the employer contribution, PEBB 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 PEBB insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the premium and applicable premium surcharge set by the health care authority (HCA). These options are available as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-133 What options for continuation coverage are available to employees and their dependents during certain types of leave or when employment ends due to a layoff? Employees who have established eligibility for public employees benefits board (PEBB) benefits as described in WAC 182-12-114 may continue coverage for themselves and their dependents during certain types of leave or when their employment ends due to a layoff.

(1) Employees who are no longer eligible for the employer contribution toward PEBB insurance coverage due to an event described in ~~((e))~~ (b)(i) through (vi) of this subsection may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharge set by the health care authority (HCA) from the date eligibility for the employer contribution is lost:

~~(a) (Employees may self-pay for a maximum of twenty-nine months. The employee must pay the premium amounts for PEBB insurance coverage as premiums become due. If the monthly premium or premium surcharge remains unpaid for sixty days, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).~~

~~(b))~~ Employees may continue any combination of medical, dental, and life insurance; however, only employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may continue either basic or both basic and optional long-term disability (LTD) insurance.

~~((e))~~ (b) Employees in the following circumstances qualify to continue coverage under this subsection:

(i) Employees who are on authorized leave without pay;
 (ii) Employees who are on approved educational leave;
 (iii) Employees who are receiving time-loss benefits under workers' compensation;

(iv) Employees who are called to active duty in the uniformed services as defined under ~~((the Uniformed Services Employment and Reemployment Rights Act (USERRA)))~~ USERRA;

(v) Employees whose employment ends due to a layoff as defined in WAC 182-12-109; or

(vi) Employees who are applying for disability retirement.

(c) The employee's election must be received by the PEBB program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the HCA, whichever is later.

(d) Employees may self-pay for a maximum of twenty-nine months. The employee's first premium payment and applicable premium surcharge is due no later than forty-five days after the employee's election is received by the HCA. Premiums and applicable premium surcharges associated with continuing PEBB medical, must be made to the HCA as well as premiums associated with continuing PEBB dental or LTD insurance coverage. Premiums associated with continuing life insurance coverage must be made to the contracted

vendor. Following the employee's first premium payment, the employee must pay the premium amounts for PEBB insurance coverage as premiums become due.

(e) If the employee's monthly premium or premium surcharge remains unpaid for sixty days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(2) The number of months that employees self-pay the premium while eligible as described in subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who have not used the maximum number of months allowed under COBRA coverage may continue medical, dental, or both for the remaining difference in months by self-paying the premium as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-138 What options are available if an employee is approved for the federal Family and Medical Leave Act (FMLA)?

(1) An employee on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward public employees benefits board (PEBB) insurance coverage in accordance with the federal FMLA. The employee may also continue current optional life and optional long-term disability. The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave.

(2) If an employee's ~~((contribution toward premiums is more than))~~ monthly premium or premium surcharge remains unpaid for sixty days ((delinquent,)) from the original due date, the employee's PEBB insurance coverage will ((end as of)) be terminated retroactive to the last day of the month for which ((a)) the monthly premium and premium surcharge was paid.

(3) If an employee exhausts the period of leave approved under FMLA, PEBB insurance coverage may be continued by self-paying the premium and applicable premium surcharge set by the HCA, with no contribution from the employer, as described in WAC 182-12-133(1) while on approved leave.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-141 If an employee reverts from an eligible position, what happens to his or her public employees benefits board (PEBB) insurance coverage?

(1) If an employee reverts for reasons other than a layoff and is not eligible for the employer contribution toward public employees benefits board (PEBB) insurance coverage under this chapter, he or she may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharge set by the health care authority (HCA) for up to eighteen months

under the same terms as an employee who is granted leave without pay under WAC 182-12-133(1)(-):

(a) The employee's election must be received by the PEBB program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the HCA, whichever is later:

(b) The employee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the employee's election is received by the HCA. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental. Premiums associated with continuing life insurance coverage must be made to the contracted vendor:

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage as premiums become due; and

(d) If the employee's monthly premium or premium surcharge remains unpaid for sixty days(-) from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(2) If an employee is reverted due to a layoff, the employee may be eligible for the employer contribution toward PEBB insurance coverage under the criteria of WAC 182-12-129. If determined not to be eligible under WAC 182-12-129, the employee may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharge set by the HCA under WAC 182-12-133.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility? (1) **Faculty** may continue any combination of medical, dental, and life insurance by self-paying the premium and applicable premium surcharge set by the health care authority (HCA), with no contribution from the employer, for a maximum of twelve months between periods of eligibility(-):

(a) The employee's election must be received by the public employees benefits board (PEBB) program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the HCA, whichever is later:

(b) The employee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the employee's election is received by the HCA. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental. Premiums associated with continuing life insurance coverage must be made to the contracted vendor:

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with ((public employees benefits board (-))PEBB((+)) insurance coverage as premiums become due((-); and

(d) If the employee's monthly premium or premium surcharge remains unpaid for sixty days((-) from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium ((-)) and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(2) **Benefits-eligible seasonal employees** may continue any combination of medical, dental, and life insurance by self-paying the premium and applicable premium surcharge set by the ((health care authority (-))HCA((+)), with no contribution from the employer, for a maximum of twelve months between periods of eligibility(-):

(a) The employee's election must be received by the PEBB program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the HCA, whichever is later:

(b) The employee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the employee's election is received by the HCA. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental. Premiums associated with continuing life insurance coverage must be made to the contracted vendor:

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage as premiums become due((-); and

(d) If the employee's monthly premium or premium surcharge remains unpaid for sixty days((-) from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(3) **COBRA.** An employee who is no longer eligible for continuation coverage as described in subsections (1) and (2) of this section, but who has not used the maximum number of months allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), may continue medical and dental for the remaining difference in months by self-paying the premium set by the HCA under COBRA as described in WAC 182-12-146. The number of months that a faculty or seasonal employee self-pays premiums under the criteria in subsection (1) or (2) of this section will count toward the total months of continuation coverage allowed under COBRA.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-146 When is an enrollee eligible to continue public employee's benefits board (PEBB) health plan coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA)? (1) An enrollee may continue public employee's benefits board (PEBB) health plan coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) by self-paying the premium set by the health care authority (HCA)((Premiums must be paid as described in WAC 182-08-180 (1)(b).

((+));

(a) The enrollee's election must be received by the PEBB program no later than sixty days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the HCA, whichever is later;

(b) The enrollee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the enrollee's election is received by the HCA. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(b);

(c) Enrollees who request to voluntarily terminate their COBRA coverage must do so in writing. The written termination request must be received by the PEBB program. Enrollees who terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility. COBRA coverage will end on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month; and

(d) Medical flexible spending arrangement (FSA) enrollees who on the date of the qualifying event, have a greater number of remaining benefits than remaining contribution payments for the current year, will have an opportunity to continue making contributions to their medical FSA by electing COBRA. The enrollee's first premium payment is due to the contracted vendor no later than forty-five days after the enrollee's election is received by the contracted vendor. The enrollee's election must be received by the contracted vendor no later than sixty days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later.

(2) An employee or an employee's dependent who loses eligibility for the employer contribution toward PEBB insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.

~~((2))~~ (3) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, 182-12-138, 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue medical, dental, or both for the remaining difference in months.

~~((3))~~ (4) A retired employee who loses eligibility for PEBB retiree insurance because an employer group, with the exception of school districts, educational service districts, and charter schools ceases participation in PEBB insurance coverage may continue medical, dental, or both.

~~((4))~~ (5) A retired employee, or a dependent of a retired employee, who is no longer eligible to continue coverage as described in WAC 182-12-171 may continue medical, dental, or both.

~~((5))~~ (6) A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5)(a) may continue enrollment in PEBB medical for the maximum number of months allowed under COBRA as described in this section.

A blind vendor is not eligible for PEBB retiree insurance coverage.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-148 What options for continuation coverage are available to employees during their appeal of dismissal? (1) Employees awaiting hearing of a dismissal action before any of the following may continue their public employees benefits board (PEBB) insurance coverage by self-paying the premium and applicable premium surcharge set by the health care authority (HCA), with no contribution from the employer, on the same terms as an employee who is granted leave as described in WAC 182-12-133:

(a) The personnel resources board;

(b) An arbitrator; or

(c) A grievance or appeals committee established under a collective bargaining agreement for union represented employees.

(2) The employee must pay premium amounts and premium surcharges associated with PEBB insurance coverage as premiums and surcharges become due. If the monthly premium or premium surcharge remains unpaid for sixty days from the original due date, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(3) If the dismissal is upheld, all PEBB insurance coverage will end at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is later, with the exception described in subsection (4) of this section.

(4) If the dismissal is upheld and the employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may continue medical and dental for the remaining months available under COBRA. See WAC 182-12-146 for information on COBRA. The number of months the employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(5) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid PEBB insurance coverage retroactively, the employing agency must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

(a) HCA will refund to the employee any premiums and premium surcharges the employee paid that may be provided for as a result of the reinstatement of the employer contribution only if the employee makes retroactive payment of any employee contribution amounts associated with the PEBB insurance coverage. In the alternative, at the request of the employee, HCA may deduct the employee's contribution from the refund of any premiums and premium surcharges self-paid by the employee during the appeal period.

(b) All optional life and optional long-term disability insurance which was in force at the time of dismissal shall be reinstated retroactively only if the employee makes retroactive payment of premium for any such optional coverage which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive

premium, evidence of insurability will be required to restore such optional coverage.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-171 When is a retiring employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? A retiring employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if he or she meets procedural and substantive eligibility requirements as described in subsections (1) ~~((and)), (2), and (3)~~ of this section. An elected state official or full-time appointed state official of the legislative or executive branch of state government is eligible as described in WAC 182-12-180.

(1) **Procedural requirements.** A retiring employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) ~~((and)), (b), and (c)~~ of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than sixty days after the employee's employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's employer-paid coverage, COBRA coverage, or continuation coverage ends~~((:));~~

(b) The employee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the employee's election is received by the HCA. Following the employee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(b); and

(c) To defer enrollment in a PEBB health plan, the employee must meet substantive eligibility requirements in subsection (2) of this section and defer enrollment as described in WAC 182-12-200 or 182-12-205.

~~((e) A retiring employee and his or her enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, he or she must enroll and maintain enrollment in medicare parts A and B to remain enrolled in PEBB retiree insurance coverage.~~

Note: If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in PEBB retiree insurance coverage. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146:))

(2) Substantive eligibility requirements.

(a) An employee as defined in WAC 182-12-109 who is eligible for PEBB benefits or an employee who is enrolled in basic benefits through a Washington state school district, educational service district as defined in RCW 28A.400.270, or a charter school and ends public employment after becoming vested in a Washington state-sponsored retirement plan may enroll or defer enrollment in PEBB retiree insurance

coverage if he or she meets procedural and substantive eligibility requirements.

~~((f)) To be eligible to continue enrollment or defer enrollment in PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer-paid coverage, COBRA coverage, or continuation coverage ends.~~

~~((ii) A retiring employee who does not meet his or her Washington state-sponsored retirement plan's age requirement when his or her employer-paid coverage or COBRA coverage, or continuation coverage ends, but who meets the age requirement within sixty days of coverage ending, may request an appeal as described in WAC 182-16-032. His or her eligibility will be reviewed by the PEBB appeals committee. An employee must meet PEBB retiree insurance coverage procedural requirements as described in subsection (1) of this section.))~~

(b) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a lump-sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011 (21)), must meet his or her Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage;

(c) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet his or her HERP plan's retirement eligibility criteria, or be at least age fifty-five with ten years of state service;

(d) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (i) or (ii) of this subsection to be eligible to continue PEBB insurance coverage as a retiree, except for a school district, educational service district, or charter school employee who must meet the requirements as described in subsection (2)(e) of this section.

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if he or she was a member of public employees retirement system Plan 1 or Plan 2 during his or her employment with that employer group or tribal government.

(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in subsection (2)(b)(i) and (ii) of this section.

(iii) A retired employee of an employer group, except a Washington state school district ~~((or))~~, educational service district, or charter school that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if he or she enrolled after September 15, 1991. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(e) A retiring employee of a Washington state school district, Washington state educational service district, or a Washington state charter school must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who ends employment before October 1, 1993; or

(ii) A retiring employee who receives a lump-sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the employee enrolled before 1995; or

(iii) A retiring employee who is a member of a Plan 3 retirement system, also called a separated employee (defined in RCW 41.05.011(21)), must meet his or her Plan 3 retirement eligibility criteria; or

(iv) An employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if he or she enrolled in a PEBB health plan no later than the ~~((health care authority's))~~HCA's(3)) annual open enrollment period for the year beginning January 1, 1995.

~~((An elected or a full-time appointed state official of the legislative or executive branch of state government who voluntarily or involuntarily leaves public office is eligible to continue PEBB insurance coverage as a retiree if he or she meets procedural requirements of subsection (1) of this section.))~~ A retiring employee and his or her enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, he or she must enroll and maintain enrollment in medicare parts A and B to remain enrolled in a PEBB health plan. 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 as described in WAC 182-12-146.

(4) Washington state-sponsored retirement plans include:

(a) Higher education retirement plans;

(b) Law enforcement officers' and firefighters' retirement system;

(c) Public employees' retirement system;

(d) Public safety employees' retirement system;

(e) School employees' retirement system;

(f) State judges/judicial retirement system;

(g) Teachers' retirement system; and

(h) State patrol retirement system.

(i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB insurance coverage at the time of retirement.

NEW SECTION

WAC 182-12-180 When is an elected state official, full-time appointed state official of the legislative or executive branch of state government, or their survivor eligible to continue enrollment in public employees benefits board (PEBB) retiree insurance coverage? (1) The following officials are eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage under the same terms as outgoing legislators, when they voluntarily or involuntarily leave public office, if they meet the procedural requirements as described in subsection (3) of this section:

(a) A member of the state legislature;

(b) A statewide elected official of the executive branch;

(c) An executive official appointed directly by the governor as the single head of an executive branch agency; or

(d) An official appointed directly by a state legislative committee as the single head of a legislative branch agency or an official appointed to secretary of the senate or chief clerk of the house of representatives.

(2) The spouse, state registered domestic partner, or child of an official described in subsection (1) of this section who loses eligibility due to the death of the official may enroll or defer enrollment as a survivor under retiree insurance coverage as described in (a) and (b) of this subsection and in subsection (3)(b) and (c) of this section.

(a) The official's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The official's child may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(3) **Procedural requirements.** An official described in subsection (1) of this section or their survivor described in subsection (2) of this section must enroll or defer enrollment in PEBB retiree insurance coverage no later than sixty days after the official leaves public office or the death of the official:

(a) To enroll in PEBB retiree insurance coverage the required forms must be received by the PEBB program no later than sixty days after the official leaves public office or the death of the official. The effective date of PEBB retiree insurance coverage is the first day of the month after the official leaves office or the death of the official;

(b) The official's or survivor's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the official's or survivor's election is

received by the PEBB program. Following the official's or survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(b);

(c) To defer enrollment in a PEBB health plan the official or the survivor must meet deferral enrollment requirements as described in WAC 182-12-200 or 182-12-205.

(4) If the official, an enrolled dependent, or their survivor is or becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, he or she must enroll and maintain enrollment in medicare parts A and B to remain enrolled in PEBB retiree insurance coverage.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-207 When can a retiree or eligible dependent's public employees benefits board (PEBB) insurance coverage be canceled by the health care authority (HCA)? A retiree or eligible dependent's public employees benefits board (PEBB) insurance coverage can be terminated by the health care authority (HCA) for the following reasons:

(1) Failure to comply with the PEBB program's procedural requirements, including failure to provide information or documentation requested by the due date in written requests from the PEBB program;

(2) Knowingly providing false information;

(3) Failure to pay the monthly premium or premium surcharge when due as described in WAC 182-08-180 (1)(b);

(4) Misconduct. If a retiree's PEBB insurance coverage is terminated for misconduct, PEBB insurance coverage will not be reinstated at a later date. Examples of such termination include, but are not limited to the following:

(a) Fraud, intentional misrepresentation or withholding of information the subscriber knew or should have known was material or necessary to accurately determine eligibility or the correct premium; or

(b) Abusive or threatening conduct repeatedly directed to an HCA employee, a health plan or other HCA contracted vendor providing PEBB insurance coverage on behalf of the HCA, its employees, or other persons.

If a retiree's PEBB insurance coverage is terminated by HCA for the above reasons, PEBB insurance coverage for all of the retiree's eligible dependents is also terminated.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-209 Who is eligible for retiree term life insurance? Eligible employees who participate in public employees benefits board (PEBB) life insurance as an employee and meet qualifications for PEBB retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree term 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))~~, the employee must pay retiree term life insurance premiums directly to the contracted vendor during the period he or she is eligible for employee life insurance; or

(b) To stop self-paying retiree term life insurance premiums during the period he or she is eligible for employee life insurance and ~~((resume self-paying premiums for))~~ reselect retiree term life insurance when he or she is no longer eligible for the employer contribution toward PEBB employee life insurance.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-211 May an employee who is determined to be retroactively eligible for disability retirement enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) An employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll or defer enrollment (as described in WAC 182-12-200 or 182-12-205) in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee submits the required form and a copy of the formal determination letter he or she received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's form and a copy of his or her Washington state-sponsored retirement system's formal determination letter are received by the PEBB program no later than sixty days after the date on the determination letter; and

(c) The employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan benefit under his or her higher education retirement plan (HERP), with exceptions described in WAC 182-12-171 (2)~~((b))~~ (a).

(2) Premiums and applicable premium surcharges 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 form. The employee may choose from the following dates:

(a) The employee's retirement date as stated in the formal determination letter; or

(b) The first day of the month following the date the formal determination letter was written.

(3) The director may make an exception to the date PEBB retiree insurance coverage begins; however, such request must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26.101.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on his or her behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in PEBB 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 Consoli-

dated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in PEBB retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than 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 1st); 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 and premium surcharges must be paid by the survivor as described in WAC 182-08-180 (1)(b) 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 for at least two years before dental can be dropped, unless they defer medical and dental coverage as described in WAC 182-12-205, or drop dental as described in WAC 182-12-208(4).

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in other coverage as described in WAC 182-12-205 (2).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(4) when they lose other coverage. Survivors must provide evidence that they were continuously enrolled in other such coverage when enrolling in a PEBB health plan. The required 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 PEBB retiree insurance coverage if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines as described in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in other coverage during the deferral period, as described in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

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 will request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility. The PEBB program will not enroll or reenroll dependents into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date his or her dependent is no longer eligible under this section. See WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from PEBB insurance coverage.

The following are eligible as dependents:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) State registered domestic partner. State registered domestic partner as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090. 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 through the last day of the month in which their twenty-sixth birthday occurred except as described in (i) of this subsection. Children are defined as the subscriber's:

(a) Children based on establishment of a parent-child relationship as described in RCW 26.26.101;

(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))~~ marriage with the spouse ~~((or state 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. The child's relationship to the subscriber (and eligibility as a PEBB dependent) ends, for purposes of this rule, on the same date the subscriber's legal relationship with the state registered domestic partner as defined in RCW 26.60.-020(1) ends through divorce, annulment, dissolution, termination, or death;

(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 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 with input from the applicable contracted vendor 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 PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their PEBB insurance coverage.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in public employees benefits board (PEBB) benefits.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-

12-205 (2)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) benefits. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date, except if the employee enrolls a newborn child in optional dependent life insurance. The newborn child's dependent life insurance coverage will be effective on the date the child becomes fourteen days old.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. The subscriber must satisfy the enrollment requirements as described in subsection (4) of this section.

(2) Removing dependents from a subscriber's health plan coverage.

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260.** Employees must notify their employing agency when a dependent is no longer eligible. All other subscribers must notify the PEBB program when a dependent is no longer eligible. Consequences for not submitting notice within sixty days of the last day of the month the dependent loses eligibility for health plan coverage may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) Employees have the opportunity to remove dependents:

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section.

(c) Retirees, survivors, and enrollees with PEBB continuation coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents from their PEBB insurance coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's PEBB insurance coverage prospectively. PEBB insurance coverage will end on the last day of the month in which the written notice is received by the PEBB program. If the written notice is received on the first day of the month, coverage will end on the last day of the previous month.

(3) Special open enrollment.

(a) 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 be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

(*) (i) Health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(*) (ii) Enrollment of an extended dependent or a dependent with a disability will be the first day of the month following eligibility certification.

(*) (iii) The dependent will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(*) (iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end ~~((the month in which the event occurs))~~ as follows:

• For the newly born child, health plan coverage will begin the date of birth;

• For a newly adopted child, health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

• For a spouse or state registered domestic partner of a subscriber, health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from health plan coverage the last day of the month in which the event occurred;

A newly born child must be at least fourteen days old before optional dependent life insurance coverage purchased by the employee becomes effective.

Any one of the following events may create a special open enrollment:

~~((a))~~ **(b)** Subscriber acquires a new dependent due to:

(i) Marriage or registering for a state domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship(~~(or~~

~~(iv) A child becoming eligible as a dependent with a disability;~~

~~(b))~~).

(c) 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);

~~((e))~~ **(d)** Subscriber has a change in employment status that affects the subscriber's eligibility for his or her employer contribution toward his or her employer-based group health plan;

~~((e))~~ (e) The subscriber's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group health plan;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

~~((f))~~ (f) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

~~((g))~~ (g) 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;

~~((h))~~ (h) 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 state registered domestic partner is not an eligible dependent);

~~((i))~~ (i) 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;

~~((j))~~ (j) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

(4) Enrollment requirements. A subscriber must submit the required 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 dependents when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required 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 the required form as soon as possible to ensure timely payment of claims. If adding the child increases the premium,

the required form must be received no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the required forms must be received no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f). To recertify an enrolled child with a disability, the required forms must be received by the PEBB program or contracted vendor by the child's scheduled PEBB coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, required forms must be received no later than sixty days after the event that creates the special open enrollment.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

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 required forms to enroll or defer enrollment in PEBB 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. The dependent's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the dependent's election is received by the HCA. Following the dependent's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(b).

(1) An employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system. To satisfy the requirement to immediately receive a monthly retirement benefit they must begin receiving monthly benefit payments no later than one hundred twenty days from the date of death of the employee.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Notes: If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, the dependent is not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, the dependent may continue health plan enrollment as described in WAC 182-12-146.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employee of a participating employer group will cease at the end of the month in which the group's contract with the authority ends unless the employer group is a school district, educational service district, or charter school.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an elected or full-time appointed official of the legislative or executive branches of state government is described in WAC 182-12-180.

(2) A retiree's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage.

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the dependent is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The dependent must submit the required 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.

Note: Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employer group retiree will cease at the end of the month in which the group's contract with the authority ends unless the employer group is a school district, educational service district, or charter school.

(3) The spouse, state registered domestic partner, or child of a deceased school district, educational service district (~~employee~~), or a charter school employee is eligible to enroll or defer enrollment 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 required form to enroll or defer enrollment in 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 as described in WAC 182-12-260.

(4) If a premium (~~or~~) and applicable premium surcharge (~~payment~~) received by the authority is sufficient as described in WAC (~~180-08-180~~) 182-08-180 (1)(c)(ii) 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 and applicable premium surcharge.

(5) In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan as described in WAC 182-12-200 and 182-12-205.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-12-260? If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the premiums and applicable premium surcharges set by the health care authority (HCA), with no contribution from the employer, following their loss of eligibility under the subscriber's health plan coverage. The dependent's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the dependent's election is received by the HCA. Following the employee's first premium payment, the dependent must pay premium and premium surcharge amounts associated with PEBB insurance coverage as premiums and premium surcharges become due. If the monthly premium or premium surcharge remain unpaid for sixty days from the original due date, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b). The public employees benefits board (PEBB) program must receive the required forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, state registered domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment as described in WAC 182-12-180, 182-12-250, or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria as described in WAC 182-12-260 are eligible to continue 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 state registered domestic partnership (~~or same-sex marriage~~) is dissolved may continue health plan enrollment under (~~an extension of~~) PEBB (~~insurance~~) continuation 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 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements. The public employees benefits board (PEBB) annually determines the design of the PEBB wellness incentive program.

(1) All subscribers, except PEBB subscribers who are enrolled in both medicare parts A and B, and in the medicare risk pool, are eligible to participate in the PEBB wellness incentive program.

(2) ~~((To receive a PEBB wellness incentive for the 2016 plan year, eligible subscribers must complete PEBB wellness incentive program requirements during 2015 by the latest date below:~~

~~(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January, February, or March, the deadline is June 30th; or~~

~~(b) For subscribers enrolling in PEBB medical with an effective date in April, May, June, July, or August, the deadline is one hundred twenty days from the subscriber's PEBB medical effective date; or~~

~~(c) For subscribers enrolling in PEBB medical with an effective date in September, October, November, or December, the deadline is December 31st.~~

~~((3))~~ Effective January 1, 2016, to receive ~~((a))~~ the PEBB wellness incentive of a reduction to the subscriber's medical plan deductible or a deposit to the subscriber's health savings account for the following plan year, eligible subscribers must complete PEBB wellness incentive program requirements during the current plan year by the latest date below:

(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January, February, March, April, May, or June the deadline is September 30th; or

(b) For subscribers enrolling in PEBB medical with an effective date in July or August, the deadline is one hundred twenty days from the subscriber's PEBB medical effective date; or

(c) For subscribers enrolling in PEBB medical with an effective date in September, October, November, or December, the deadline is December 31st.

~~((4))~~ (3) Subscribers who do not complete the requirements according to subsection (2) ~~((or (3)))~~ of this section, except as noted, within the time frame described are not eligible to receive a PEBB wellness incentive the following plan year.

Note: All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The PEBB program will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

(4) Effective January 1, 2018, an eligible subscriber will receive a separate PEBB wellness incentive for completing the SmartHealth well-being assessment on or before December 31st, of the current plan year. An eligible subscriber may

only earn this separate PEBB wellness incentive once per plan year.

(5) ~~((A))~~ PEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (2) of this section the subscriber is still eligible for the PEBB wellness incentive program in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a PEBB wellness incentive program or a PEBB wellness incentive, or both; or

(c) Specific appropriations are provided for wellness incentives.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-16-010 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. The model rules of procedure may be found in chapter 10-08 WAC. Other procedural rules adopted in 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 WAC 182-16-025 through 182-16-040, the procedural rules adopted by the health care authority (HCA) 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 appeals 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~~((;))~~ and 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))~~ HCA program.

(3) The definitions in WAC 182-16-020 apply throughout this chapter.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-16-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Appellant" means a person or entity who requests a review by the PEBB appeals committee or an administrative hearing about the action of the HCA or its ~~((designee))~~ contracted vendor.

"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 ~~((s))~~ and Sundays ~~((s))~~, ~~and all legal holidays as set forth in RCW 1.16.050~~.

"Continuance" means a change in the date or time of a hearing.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, either an employing agency, or the PEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state 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, electronic mail, electronic files, or other printed or written items.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organiza-

tions representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under ~~((this chapter))~~ RCW 41.05.011 or by the authority under this chapter.

"Employer-based group medical" means ~~((employer-based))~~ group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the presiding officer's office.

"Final order" means an order that is the final PEBB program decision.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing" means a proceeding before a presiding officer that gives an appellant an opportunity to be heard in a dispute about a decision made by the PEBB appeals committee,

including prehearing conferences, dispositive motion hearings, status conferences, and evidentiary hearings.

"Hearing representative" means a person who is authorized to represent the PEBB program in an administrative hearing. The person may be an assistant attorney general, a licensed attorney, or authorized HCA employee.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Life insurance" for eligible employees includes basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as optional life insurance and optional AD&D insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Prehearing conference" means a proceeding scheduled and conducted by a presiding officer to address issues in preparation for a hearing.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or state registered domestic partner choosing not to enroll in his or her employer-based group medical 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

- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the ((office of administrative hearings)) OAH.

"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.

"Service" or "serve" means the delivery of documents as described in WAC 182-16-067.

"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))~~ continuation coverage enrollee, or ~~((eligible))~~ survivor who has been ~~((designated))~~ determined eligible by the ~~((HCA as))~~ PEBB program, employer group, state agency, or charter school and is the individual to whom the ((HCA)) PEBB program 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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

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 current or former 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 PEBB 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 current or former 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 may appeal that decision to the employer group through the process established by the employer group.

Exception: Any current or former employee of an employer group aggrieved by a decision regarding life insurance, long-term disability (LTD) insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may appeal that decision to the PEBB appeals 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 PEBB eligibility, enrollment, premium payments, premium surcharge, 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 health plan, life insurance, ~~((LTD))~~ LTD insurance, long-term care insurance, or property and casualty insurance may appeal that decision by following the appeal provisions of those plans, with the exception of ~~((eligibility, enrollment, and premium payment determinations))~~:

(a) Enrollment decisions;

(b) Premium payment decisions other than life insurance premium payment decisions; and

(c) Eligibility decisions.

(5) Any PEBB enrollee aggrieved by a decision regarding the administration of PEBB long-term care insurance or property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(6) Any PEBB employee aggrieved by a decision regarding the administration of a benefit offered under the 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 contracted vendor regarding the completion of the PEBB wellness incentive program requirements, or a request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision by the process described in WAC 182-16-035.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-16-030 How can ~~((an))~~ a current or former 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 no later than thirty days after the date of the initial denial notice. The contents of the request for review are to be provided as described in 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 employee or employee's dependent who submitted the request for review.

(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)))~~ errors made by the employing state agency.

(2) Any current or former 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 no later than thirty days 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 as described in WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-032 How can a decision made by the public employees benefits board (PEBB) program

regarding eligibility, enrollment, premium payments, premium surcharge, 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) 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, may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(2) A decision made by an employer group regarding life insurance, LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may be appealed by submitting a 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))~~ a current or former employee or employee's dependent must be received by the PEBB appeals manager no later than thirty days 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 no later than sixty days 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 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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 contracted vendor.

(2) Any subscriber who disagrees with a decision in response to an appeal filed with the ~~((third-party administrator that administers the))~~ public employee benefits board (PEBB) wellness incentive program contracted vendor may appeal to the ~~((public employees benefits board-))~~ PEBB ~~(())~~ appeals committee.

(a) The notice of appeal from ~~((an))~~ a current or former 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 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-16-036 How can an employee who is eligible to participate in the state's salary reduction plan appeal a decision regarding the administration of benefits offered under the state's salary reduction plan? (1) Any employee who is eligible to participate in the state's salary reduction plan who disagrees with a decision that denies eligibility for or enrollment in a benefit offered under the state's salary reduction plan may appeal that decision by submitting a written request for review to his or her state agency. The state agency must receive the request for review no later than thirty days after the date of the initial denial notice. The contents of the request for review are to be provided as described in WAC 182-16-040.

(a) Upon receiving the request for review, the state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the employee.

(c) A copy of the state agency's written decision shall be sent to the state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The state agency's written decision shall become the state agency's final decision effective fifteen days after the date it is rendered.

(d) Any employee who disagrees with the state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(e) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(f) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(g) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(2) Any employee who is eligible to participate in the state's salary reduction plan aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) and dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision to the ~~((third party administrator contracted to administer the plan))~~ plan's contracted vendor by following the appeal process of ~~((the third party administrator))~~ that contracted vendor.

Any employee who is eligible to participate in the state's salary reduction plan who disagrees with a decision in response to an appeal filed with the ~~((third party administrator))~~ contracted vendor that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the appeal decision by the ~~((third party administrator))~~ contracted vendor that administers the medical FSA and DCAP. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any employee who is eligible to participate in the state's salary reduction plan aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the denial notice by the PEBB program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

WSR 17-19-088
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-253—Filed September 19, 2017, 10:09 a.m., effective October 20, 2017]

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

Purpose: The proposal is intended to establish harvest guidelines for twenty-one spring bear hunts around the state during 2018 hunting season. The proposal will: (1) Remove the 2017 season regulations from the current rule; (2) extend the season ending date to June 15 for GMUs 154, 162, 166, 169, 172, 175, 181, and 186; and (3) remove the Monroe hunt area. The anticipated effects include mitigation of nuisance and damage activity while providing distributed recreational hunting opportunities within harvest management levels described in the 2015-2021 game management plan prepared by the department.

Citation of Rules Affected by this Order: Amending WAC 220-415-080.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.240, 77.04.055, 77.12.047, 77.12.150, and 77.32.070.

Adopted under notice filed as WSR 17-13-132 on June 21, 2017.

Changes Other than Editing from Proposed to Adopted Version: Change: Reduce the number of permits offered in the Long Beach hunt, GMU 684, from twenty permits to twelve permits.

Rationale: The department has determined that damage occurrences have diminished and thereby hunting pressure can be reduced in this hunt area.

Change: Add GMUs 638 and 648 (excluding U.S. Forest Service lands) to the Copalis hunt.

Rationale: This adjustment will distribute hunting pressure across areas where damage mitigation and distribution of harvest is needed.

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 the Request of a Non-governmental 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: August 18, 2017.

Brad Smith, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-415-080 ((2017 and)) 2018 Spring black bear seasons and regulations. It is unlawful to fail to comply with the provisions of this section. A violation of this sec-

tion is punishable under RCW 77.15.410, 77.15.245, or 77.15.280, depending on the circumstances of the violation.

Who May Apply: Anyone with a valid Washington big game license, which includes black bear as a species option.

Hunt Areas, Permit Levels, and Season Dates for Each License Year:

Hunt Name	Hunt Area	Permits	Season Dates
Sherman	GMU 101	50	April 1 - June 15
Kelly Hill	GMU 105	50	April 1 - June 15
Douglas	GMU 108	40	April 1 - June 15
Aladdin	GMU 111	50	April 1 - June 15
49 Degrees North	GMU 117	100	April 1 - June 15
Huckleberry	GMU 121	100	April 1 - June 15
Blue Creek	GMU 154	15	April 15 - ((May 31)) June 15
Dayton	GMU 162	15	April 15 - ((May 31)) June 15
Tucannon	GMU 166	5	April 15 - ((May 31)) June 15
Wenaha	GMU 169	45	April 15 - June 15
Mt. View	GMU 172	15	April 15 - ((May 31)) June 15
Lick Creek	GMU 175	15	April 15 - ((May 31)) June 15
Couse	GMU 181	4	April 15 - ((May 31)) June 15
Grande Ronde	GMU 186	5	April 15 - ((May 31)) June 15
Kitsap	GMU 627	5	April 15 - May 31
Mason	GMU 633	5	April 15 - May 31
Bear River	GMU 681	20	April 15 - May 31
Long Beach	GMU 684	((20)) 12	April 15 - May 31
North Skagit	That portion of GMU 418 that is designated as the hunt area by DNR, Sierra Pacific, Weyerhaeuser-Columbia Timber Lands, and Grandy Lake Timber company.	30	April 15 - June 15
((Monroe	That portion of GMU 448 that is designated as the hunt area by DNR and Campbell Global.	25	April 15 - June 15))
Copalis	GMU 642, 638, and 648 (excluding U.S. Forest Service lands).	50	April 15 - June 15
Kapowsin	That portion of GMUs 653 and/or 654 that is designated as the hunt area by Hancock Forest Management and International Forestry.	150	April 15 - June 15

Bag Limit: One black bear per black bear special permit season.

License Required: A valid big game hunting license, which includes black bear as a species option, is required to hunt

black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for

hunting black bear. The use of dogs or bait to hunt black bear is prohibited statewide.

Submitting Bear Teeth: Successful bear hunters must submit the black bear premolar located behind the canine tooth of the upper jaw.

WSR 17-19-089
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 19, 2017, 10:24 a.m., effective October 20, 2017]

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

Purpose: The adopted rules provide further clarification about Option 2 benefits. After a worker's vocational retraining plan is approved by the department, the worker can elect Option 2, which allows the worker access to training funds for a self-directed training plan. The worker can use up to ten percent of the Option 2 training funds for vocational counseling and job placement services if the worker's vocational retraining plan was approved on or after July 31, 2015.

The adopted rules:

- Revise wording to make the rules easier to understand.
- Explain the worker's option election limits.
- Define Option 2 vocational counseling and job placement services.
- Specify who can provide Option 2 vocational counseling and job placement services.
- Describe how Option 2 vocational counseling and job placement services are delivered.
- List the vocational provider's Option 2 reporting requirements.
- Outline how Option 2 vocational bills are charged and paid.

Citation of Rules Affected by this Order: New WAC 296-19A-627 If the worker has more than one open claim and is approved for vocational retraining, can the worker pick Option 1 on one claim and Option 2 on the other?, 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1?, 296-19A-631 What are Option 2 vocational counseling and job placement services?, 296-19A-633 Who can deliver Option 2 vocational counseling and job placement services?, 296-19A-635 Who pays the vocational provider for Option 2 vocational counseling and job placement services? and 296-19A-637 How are vocational counseling and job placement services delivered?; and amending WAC 296-19A-010 Definitions, 296-19A-040 What vocational rehabilitation services require authorization?, 296-19A-120 What reports are required when vocational rehabilitation plan implementation and monitoring services are completed?, 296-19A-320 What other requirements are providers required to follow?, 296-19A-350 What are the requirements for case notes?, and 296-19A-400 What records are vocational rehabilitation providers required to maintain?

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, chapter 137, Laws of 2015 (SHB 1496).

Adopted under notice filed as WSR 17-15-092 on July 18, 2017.

Changes Other than Editing from Proposed to Adopted Version: The adopted rules differ slightly from the proposed rules. Edits to WAC 296-19A-635: Clarify language on how the ten percent for vocational services is calculated and allow greater flexibility should the department's billing requirements change.

A final cost-benefit analysis is available by contacting Laurinda Grytness, P.O. Box 44329, Olympia, WA 98504-4329, phone 360-902-6362, fax 360-902-6706, TTY 360-902-5795, email Laurinda.Grytness@LNI.WA.GOV.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 6, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 6, Amended 6, 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, 2017.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-010 Definitions. (1) What does it mean to say an injured worker is employable?

(a) "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:

- (i) Age, education, and experience;
- (ii) Preexisting physical and mental limitations; and
- (iii) Physical and mental limitations caused, at least in part, by the worker's industrial injury or occupational disease.

(b) Physical and/or mental conditions that arose after the industrial injury/occupational disease that were not caused or aggravated by the industrial injury/occupational disease are not considered in determining whether the worker is employable under the Industrial Insurance Act.

(c) If there are no physical or mental restrictions caused by the worker's industrial injury/occupational disease, the worker must be found employable under the Industrial Insurance Act.

(2) **What are vocational rehabilitation services?** Vocational rehabilitation services are those provided by a vocational rehabilitation provider and include, but are not limited to, the following:

- (a) Gathering industrially injured or ill workers' work and/or education histories and physical capacities information;
- (b) Assessing industrially injured or ill workers' employability;
- (c) Developing, documenting, and writing vocational rehabilitation plans;
- (d) Monitoring injured workers' progress during training;
- (e) Writing progress reports;
- (f) Analyzing and documenting the transferable skills of the injured worker and writing transferable skills analyses;
- (g) Performing occupational research;
- (h) Conducting labor market surveys and writing labor market survey reports;
- (i) Conducting and writing job analyses;
- (j) Communicating with industrially injured or ill workers, employers, physicians and others;
- (k) Developing job modifications and work site modifications, as well as prejob accommodations, and writing reports for this work; ~~((and))~~
- (l) All work done to obtain any job with any employer for injured workers referred for vocational rehabilitation services; and
- (m) Providing the Option 2 vocational services listed in WAC 296-19A-631.

(3) **What is a vocational rehabilitation provider (provider)?** A provider is any person, firm, partnership, corporation, or other legal entity that provides vocational rehabilitation services to industrially injured or ill workers, pursuant to Title 51 RCW ((51.32.095)). A provider must meet the qualifications listed in WAC 296-19A-210.

(4) **What is an injured worker's labor market?** Generally, the worker's relevant labor market is the geographic area where the worker was last gainfully employed. The labor market must be within a reasonable commuting distance and be consistent with the industrially injured or ill worker's physical and mental capacities. The exceptions to this rule are listed in the table below:

When a worker:	Then the department:
<ul style="list-style-type: none"> • Relocates to a labor market other than at the time of injury and • Returns to work and • Suffers an aggravation of the work-related condition. 	Uses the labor market where the industrially injured or ill worker worked at the time of the aggravation. This applies whether the department closed and reopened the claim or whether the claim remained open during the period of aggravation.

When a worker:	Then the department:
<ul style="list-style-type: none"> • Relocates after the industrial injury/illness or aggravation and • Now lives in a labor market with more employment opportunities than where the industrially injured or ill worker worked at the time of injury. 	Uses the industrially injured or ill worker's current labor market. For example, an industrially injured or ill worker was injured in Forks but after the injury, moves to Tacoma. Provider would use Tacoma as the industrially injured or ill worker's labor market.
<ul style="list-style-type: none"> • Relocates to a labor market other than at the time of injury or onset of illness and • The move was proximately caused by the medical condition arising from the occupational injury or disease. 	Uses the injured or ill worker's current labor market. For example, an industrially injured or ill worker moves to a drier climate due to an accepted asthma condition. Provider would use the labor market in the drier climate.

(5) **What is a labor market survey (LMS)?** It is a survey of employers in an industrially injured or ill worker's labor market to obtain specific information (such as physical demands and qualifications) related to job possibilities.

(6) **What is a job analysis (JA)?** It is the gathering, evaluating, and recording of accurate, objective data about the characteristics of a particular job.

(7) **What is a transferable skill?** Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and work-related skills that can be readily applied by the worker. They are skills that are interchangeable among different jobs and workplaces. Nonwork-related talents or skills that are both demonstrated and applicable may also be considered.

(8) **What is a transferable skills analysis?** It is a systematic study of the transferable skill or skills a worker has demonstrated to see if that skill set makes him/her employable.

(9) **What are job modifications?** Job modifications are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of job modification benefits is to encourage employers to modify jobs to retain or hire injured workers. Job modifications are used when an employer-employee relationship exists, and they may include worksite adjustment; job restructuring; and/or tools, equipment or appliances.

(10) **What are prejob accommodations?** Prejob accommodations are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of prejob accommodation benefits is to make it possible for the worker to perform the essential functions of a job. Accommodations are used when an industrially injured or ill worker is engaged in a vocational rehabilitation plan or

in a job search, and they may include tools, equipment or appliances.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-040 What vocational rehabilitation services require authorization? All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Early intervention; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Each referral is a separate authorization for vocational rehabilitation services. Option 2 vocational services are considered authorized for state fund and self-insured claims once the department accepts the worker's election of Option 2. However, the services can only be provided upon request from the worker to the vocational provider.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-120 What reports are required when vocational rehabilitation plan implementation and monitoring services are completed? When plan implementation and monitoring services are completed, the vocational rehabilitation provider must submit a closing report with one of the following recommendations:

(1) **Plan successfully completed.** If the worker successfully completes the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An assessment of the worker's employability status at the time of closure;

(b) A list of courses the worker completed and an assessment of the work-related skills acquired by the worker during the training plan;

(c) Whether the worker has returned to gainful employment. If so, list the job title, employer, return to work date, and monthly salary;

(d) A description of the barriers, if any, to the worker's ability to return to gainful employment; and

(e) A description of the job search assistance provided.

(2) **Plan not completed, Option 2 not elected.** If the worker does not successfully complete the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An explanation of why the vocational rehabilitation plan cannot be modified or completed;

(b) An assessment of the worker's employability status at the time the plan stopped;

(c) A list of the courses completed and an assessment of the work-related skills the worker acquired during the training plan;

(d) Whether the worker has returned to work. If so, list the job title, employer, return to work date, and monthly salary; and

(e) A description of any remaining barriers that may keep the worker from returning to work.

(3) **Plan not completed, Option 2 elected.** When the vocational rehabilitation provider is notified that the worker elected Option 2 before completing the vocational rehabilitation plan, the closing report must contain:

(a) The approved retraining goal.

(b) The date the worker started the retraining.

(c) An outline of work-related skills the worker acquired during the training plan, if any.

(d) An outline of discussion with the worker about Option 2.

(e) Whether the worker has withdrawn from courses.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-320 What other requirements are providers required to follow? By rendering vocational rehabilitation services to industrially injured or ill workers under Title 51 RCW ((51.32.095)), the vocational rehabilitation provider agrees to comply with Title 51 RCW, chapters 296-19A and 296-15 WAC, and the department's fee schedule.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-350 What are the requirements for case notes? Vocational rehabilitation providers must maintain case notes. Case notes must:

(1) Include the first and last name of the industrially injured or ill worker being served and the worker's claim number at the top of each page;

(2) Include the first and last name of the vocational rehabilitation provider providing each service documented on each page;

(3) Be kept in a claimant file corresponding to the reports, medical information, correspondence, and other materials that they provide documentation for;

(4) Testing and other records with special confidentiality requirements may be kept in separate files;

(5) Be legible;

(6) Be in chronological order;

(7) Record the date each service was provided month/day/year year;

(8) For providers who bill for vocational services, include the amount of time, recorded in tenths of an hour, required to provide each service;

(9) Describe each service sufficiently to allow the ~~((referral source))~~ department or self-insured employer to verify the purpose, level, type, and outcome of each service provided and substantiate the charges billed for them.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-400 What records are vocational rehabilitation providers required to maintain? (1) A vocational rehabilitation provider must maintain adequate documentation in claimant-specific files to verify the level, type, and extent of the vocational rehabilitation services provided to and on behalf of industrially injured or ill workers.

(2) A vocational rehabilitation provider who requests payment from the ~~((referral source))~~ department or self-insured employer for vocational rehabilitation services must maintain all records necessary for the director's authorized auditors to audit the provision of services. Providers need to keep all records necessary to disclose the specific nature and extent of all services provided for an industrially injured or ill worker, along with the amounts billed to the department, for those services. Records must be maintained for audit purposes for a minimum of five years from the date of closure by the provider, or, in the case of Option 2 vocational services, for a minimum of five years from the last date of service.

NEW SECTION

WAC 296-19A-627 If the worker has more than one open claim and is approved for vocational retraining, can the worker pick Option 1 on one claim and Option 2 on the other? No. If a worker has more than one open claim and is found to be eligible for plan development services based on the effects of all injuries or illnesses related to the claim(s), the assigned vocational provider will develop one plan for the worker that takes into account the restrictions caused by all of the worker's accepted conditions. Once the department approves that plan, the worker will be given an option election form that allows the worker to choose to perform the plan that was developed for the worker (Option 1) or to choose Option 2. The worker's election of an option on that form will apply to all the claims under which the retraining plan was developed, regardless of whether the claim(s) are state fund or covered under a self-insured employer.

NEW SECTION

WAC 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1? No. The worker cannot elect Option 1 after the department has issued the order confirming the worker's Option 2 election. Exception: A worker may elect Option 1 when the Option 2 election has been rescinded as provided by RCW 51.32.096 (4)(b).

NEW SECTION

WAC 296-19A-631 What are Option 2 vocational counseling and job placement services? (1) Option 2 allows workers access to training funds for self-directed training plans. Up to ten percent of the worker's available training funds may be used for vocational counseling and job placement services if both the following are true:

- (a) The worker's plan was approved on or after July 31, 2015; and
- (b) The department has granted Option 2 benefits to the worker.

(2) For the purposes of this section, Option 2 vocational counseling services may include, but are not limited to:

- (a) Help in accessing available community services to assist the worker with reentering the workforce.
- (b) Assistance in developing a training plan.
- (c) Coaching and guidance as requested by the worker.

(d) Interests and skills assessment, if the worker requests or agrees such is needed to reach the worker's training or employment goals.

(e) Other services directly related to vocational counseling, such as job readiness and interview practice.

(3) For the purposes of this section, Option 2 job placement services may include, but are not limited to:

- (a) Help in developing an action plan for return to work.
- (b) Job development, including contacting potential employers on the worker's behalf.
- (c) Job search assistance.
- (d) Job application assistance.
- (e) Help in obtaining employment as a preferred worker, if certified, up to and including educating the employer on preferred worker incentives.

(f) Other services directly related to job placement, such as targeted resume development and referral to community resources such as WorkSource.

NEW SECTION

WAC 296-19A-633 Who can deliver Option 2 vocational counseling and job placement services? (1) A vocational rehabilitation counselor who meets the qualifications in WAC 296-19A-210(1) and obtains a provider number issued by the department can deliver Option 2 vocational counseling and job placement services. Interns cannot deliver Option 2 vocational counseling and job placement services.

(2) A public sector organization that provides such services, such as WorkSource.

NEW SECTION

WAC 296-19A-635 Who pays the vocational provider for Option 2 vocational counseling and job placement services? (1) The department or self-insured employer will pay for appropriately submitted billings from the worker's Option 2 training fund, within the following limits:

(a) The total of all payments for all Option 2 vocational counseling and job placement services will not exceed ten percent of the worker's maximum Option 2 training fund, nor will the payment or payments for Option 2 vocational counseling and job placement services exceed the remaining balance of the worker's maximum Option 2 training fund at the time payment is made; and

(b) Vocational services must be provided within five years following the date of the department's order confirming the worker's Option 2 election.

(2) The training fund is expended in the order of bills received by the department or self-insured employer. For example, if the worker's maximum Option 2 training fund was seventeen thousand five hundred dollars, and if the worker had not used any of those funds, the worker would have one thousand seven hundred fifty dollars to spend on vocational counseling and job placement services. However, if the worker used all but six hundred dollars out of the Option 2 training fund for training expenses before bills were received for vocational services, the amount available for vocational services would be six hundred dollars.

(3) The vocational provider must charge for services as outlined in the department's current vocational services medical aid rules and fee schedules.

(4) In addition to the services listed in WAC 296-19A-340, the department or self-insured employer will not pay for vocational travel or wait time.

(5) Under no circumstance may the vocational provider bill the worker directly for services.

NEW SECTION

WAC 296-19A-637 How are vocational counseling and job placement services delivered? (1) Beginning the date Option 2 benefits are granted, the worker can enlist the services of a qualified vocational rehabilitation provider.

(a) The worker and vocational provider must create a service agreement focused on the worker's goals. The agreement must clearly state:

- (i) The worker's vocational goals.
- (ii) The list of planned vocational services.
- (iii) The worker's and vocational provider's responsibilities in fulfilling the agreement.
- (iv) The total estimated hours and cost of planned services.

(b) Both the worker and the vocational provider must sign the agreement.

(2) At the end of each meeting with the worker the vocational provider must complete the department's Option 2 vocational services report form, listing updates since the previous report including:

- (a) Names and provider numbers of all providers rendering services;
- (b) Services delivered;
- (c) Progress, including goals reached;
- (d) Next steps; and
- (e) Service hours and costs.

(3) Both the vocational provider and worker must sign each report form to verify it is correct and acceptable, and then the vocational provider must give a copy to the worker and send a copy to the department or self-insured employer.

(4) The vocational provider may not bill the department or the self-insured employer for the completion of the Option 2 vocational services report form.

(5) The worker may switch to a different qualified vocational provider any time during the five-year Option 2 training period if there are enough training funds left of the ten percent allowed to spend on Option 2 vocational services.

WSR 17-19-098

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed September 19, 2017, 11:37 a.m., effective October 20, 2017]

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

Purpose: The department is creating WAC 388-71-0701 and 388-71-0723 and amending WAC 388-71-0702, 388-71-0718, and 388-71-0722 to define the terms used throughout

the chapter, update existing language as it pertains to the center's responsibility in developing a negotiated care plan, and define clients rights in regards to restraints including physical restraints, chemical restraints, involuntary seclusion, and the use of medical devices.

Citation of Rules Affected by this Order: New WAC 388-71-0701 and 388-71-0723; and amending WAC 388-71-0702, 388-71-0718, and 388-71-0722.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 17-12-104 on June 6, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-71-0723(4), added "for discipline or staff convenience." WAC 388-71-0701 and 388-71-0723 (5)(a) (b) [(5)(b)], changed "exploitation" to "personal exploitation."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 13, 2017.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-20 issue of the Register.

WSR 17-19-115

PERMANENT RULES OLYMPIC REGION CLEAN AIR AGENCY

[Filed September 20, 2017, 10:52 a.m., effective October 21, 2017]

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

Purpose: The federal regulation reference date in Rule 1.11 was changed from July 1, 2016, to July 1, 2017. This will allow olympic region clean air agency (ORCAA) to enforce later versions of federal regulations adopted by reference in ORCAA's regulations.

Citation of Rules Affected by this Order: Amending ORCAA regulations, Rule 1.11.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 17-16-077 on July 26, 2017.

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 the Request of a Non-governmental 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 13, 2017.

Francea L. McNair
Executive Director

AMENDATORY SECTION

Rule 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, (~~2016~~) 2017.

