

**WSR 19-14-003****PERMANENT RULES****DEPARTMENT OF TRANSPORTATION**

[Filed June 19, 2019, 4:17 p.m., effective July 20, 2019]

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

Purpose: Corrects a clerical error to WAC 468-06-060 to give the public access to the public records web application.

Citation of Rules Affected by this Order: Amending WAC 468-06-060.

Statutory Authority for Adoption: RCW 42.56.040.

Adopted under notice filed as WSR 19-09-054 on April 15, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 19, 2019.

Kara Larsen  
Director  
Risk Management and  
Legal Services Division

**AMENDATORY SECTION** (Amending WSR 19-07-026, filed 3/12/19, effective 4/12/19)

**WAC 468-06-060 Requesting public records.** (1) Submitting a request. Requests for public records can be made by:

(a) Using the public disclosure request center, by clicking on the link on the web site at <http://www.wsdot.wa.gov/Contact/PublicDisclosure>, or going to (~~[https://wsdot.mycusthelp.com/WEBAPP/\\_rs/supporthome.aspx](https://wsdot.mycusthelp.com/WEBAPP/_rs/supporthome.aspx)~~) [https://wsdot.mycusthelp.com/WEBAPP/\\_rs/supporthome.aspx](https://wsdot.mycusthelp.com/WEBAPP/_rs/supporthome.aspx); or

(b) Submitting a written request to the department that includes:

(i) The name, address, telephone number, and email address of the person requesting the records;

(ii) The date and time of the request;

(iii) A description of the public records sought adequate for the department to identify and locate all responsive records;

(iv) Language stating that the request for records is intended as a public records request or a similar statement placing the department on fair notice that records are being sought under the PRA; and

(v) A statement indicating whether copies or the records are sought or if the requestor wants to arrange to inspect records.

Requests not submitted through the public disclosure request center identified in (a) of this subsection can be submitted to the department via U.S. mail, hand delivery, or facsimile at:

Public Records Office  
Transportation Building  
310 Maple Park Avenue S.E.  
P.O. Box 47410  
Olympia, WA 98504-7410  
Facsimile: 360-705-6808

Failure to submit requests to the department at the above location may result in a delay in the department's response.

(2) Requested production. Nonexempt records are available through inspection, paper copies, or electronic copies. The requestor should indicate the production preference and make arrangements to pay the fees, if any.

**WSR 19-14-012****PERMANENT RULES****DEPARTMENT OF REVENUE**

[Filed June 21, 2019, 9:31 a.m., effective July 22, 2019]

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

Purpose: WAC 458-16-340 is a new rule that explains the requirements for the property tax exemption under RCW 84.36.670 for real and personal property owned by a senior citizen organization that is used for the operation of a multi-purpose senior citizen center.

Citation of Rules Affected by this Order: New WAC 458-16-340 Multipurpose senior citizen centers.

Statutory Authority for Adoption: RCW 84.36.865.

Adopted under notice filed as WSR 19-10-042 on April 26, 2019.

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 1, Amended 0, Repealed 0.

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

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

Date Adopted: June 21, 2019.

Kevin Dixon  
Program Manager

NEW SECTION

**WAC 458-16-340 Multipurpose senior citizen centers.** (1) **Introduction.** This rule explains the real and personal property tax exemption available under RCW 84.36.-670 to persons who operate a multipurpose senior citizen center.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Assessment year" means the calendar year preceding the tax year in which real and personal property is listed and valued by the assessor.

(b) "Farmers market" means a regular assembly of vendors at a location for the main purpose of promoting the sale of agricultural products grown, raised, or produced in this state directly to the consumer.

(c) "Multipurpose senior citizen center" means a community facility that provides a broad spectrum of services to senior citizens, whether provided directly by the nonprofit senior citizen organization that owns the facility or by another person. These services may include health, social, nutritional, and educational services and recreational activities.

(d) "Senior citizen" means a person age sixty or older.

(e) "Senior citizen organization" means a private organization that:

(i) Has a mission, in whole or in part, to support senior citizens;

(ii) Is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; and

(iii) Operates a multipurpose senior citizen center.

(f) "Tax year" means the year in which property taxes are due.

(g) "Thrift store" means a retail establishment that:

(i) Is operated by a senior citizen organization;

(ii) Is located on the same parcel of real property as the senior citizen organization's multipurpose senior citizen center, or on a contiguous parcel of real property; and

(iii) Sells goods including, but not limited to, donated goods, as part of the senior citizen organization's fund-raising efforts for the operation of its multipurpose senior citizen center and for the provision of services and activities for senior citizens. If the thrift store sells nondonated goods, its gross annual sales of nondonated goods cannot exceed ten percent of its total combined gross annual sales of all goods.

(3) **Exemption availability.**

(a) **Qualifying uses of property.** Both real property (which may be located on contiguous parcels) and personal property owned by a senior citizen organization are exempt from property tax if the property is used for the actual operation of a multipurpose senior citizen center (center). Additionally, the following activities may be conducted at the center:

(i) **Loan or rental.** The center may be loaned or rented for either for-profit or not-for-profit purposes, if the rent and donations received for the use of the center are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the center being loaned or rented.

(ii) **Fund-raising events.** The center may be used for fund-raising events and activities, including the operation of a farmers market or a thrift store.

(A) If the center is used to conduct fund-raising events and activities for the purpose of providing financial support for the center or for services and activities for senior citizens, then no restrictions apply to the type of organization conducting the fund-raising event or to the amount of rents or donations received.

(B) If the center is used to conduct fund-raising events and activities for purposes other than to support services and activities for senior citizens, then the fund-raising events and activities must be conducted by a nonprofit organization eligible for exemption under chapter 84.36 RCW. Additionally, the rent and donations received for the use of the center must be reasonable and cannot exceed the maintenance and operation expenses attributable to the portion of the center loaned or rented for the fund-raising event.

**Example.** A 501 (c)(3) nonprofit organization formed with the mission to support senior citizens owns real property that is used for the operation of a multipurpose senior citizen center. The center offers a broad spectrum of health, fitness, and nutrition services for senior citizens on a weekly basis and operates a thrift store. The thrift store is located within the center, is open four days each week, and sells donated items as part of the organization's fund-raising efforts for the operation of the center. The center is also rented on weekends, for a reasonable fee that does not exceed the maintenance and operations expenses attributable to the rented property, to the public for events such as weddings and family reunions. Based on the information provided, the center would qualify for the property tax exemption.

(b) **Nonqualifying use of property.** A pattern of use of the property in a manner inconsistent with the purpose of this exemption nullifies the exemption. A pattern of use is presumed when there is a use inconsistent with the purpose of operating a multipurpose senior citizen center and that use is repeated in the same assessment year or in two or more successive years. An example of a nonqualifying use that would be considered inconsistent with the purpose of operating a senior citizen center would be a commercial bakery that is open to the public and leases space, on a regular and on-going basis, from the center.

(c) The center must be available to all regardless of race, color, religion, creed, gender, gender expression, national origin, ancestry, the presence of any sensory, mental, or physical disability, marital status, sexual orientation, or honorably discharged veteran or military status.

(d) This exemption is not subject to the provisions of RCW 84.36.805.

(4) **Application and renewal.** This exemption is available beginning with property taxes levied in the 2017 assessment year (for collection in the 2018 tax year) through the 2026 assessment year (for collection in the 2027 tax year). RCW 82.32.805(1).

(a) **Initial application.** In order to be considered timely, initial applications must be received on or before:

(i) March 31st for taxes to be collected in the following year; or

(ii) Within sixty days of either acquiring the property or converting the property to an exempt use, whichever is later.

(b) Retroactive application. Retroactive applications to claim the exemption for prior years will be accepted up to a maximum of three years from the date taxes were due on the property. The last day to file a retroactive application for this exemption is April 30, 2030, for taxes that were due in the 2027 tax year. The applicant must:

(i) Provide the department with acceptable proof that the property qualified for exemption during the pertinent assessment years; and

(ii) Pay the late filing penalties under RCW 84.36.825.

(c) Renewal application. After the department approves an initial or retroactive application, the exemption applies for one year and must be renewed by March 31st of each year to exempt the property from taxes due the following year. See WAC 458-16-110 *Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds*, for more information about procedures property owners must follow to apply for and renew property tax exemptions.

(5) **Loss of exemption.** If the property is used for a non-qualifying purpose, it is subject to property tax for the remaining part of the assessment year. See RCW 84.40.360.

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

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

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

Date Adopted: June 21, 2019.

Kevin Dixon  
Program Manager

**AMENDATORY SECTION** (Amending WSR 19-02-069, filed 12/28/18, effective 1/1/19)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.** (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2019:

**WSR 19-14-013**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed June 21, 2019, 9:49 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The forest land values rule is required by statute (RCW 82.33.140) to be effective on July 1, 2019.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2019.

Citation of Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Adopted under notice filed as WSR 19-10-058 on April 30, 2019.

A final cost-benefit analysis is available by contacting Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606, TTY 1-800-451-7985, email Brentonm@dor.wa.gov, web site dor.wa.gov.

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

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

**Washington State Department of Revenue**  
**WESTERN WASHINGTON STUMPAGE VALUE TABLE**  
~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2019

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	1	<del>((507))</del> <u>452</u>
		2	<del>((590))</del> <u>494</u>
		3	<del>((576))</del> <u>495</u>
		4	<del>((635))</del> <u>577</u>
		5	<del>((620))</del> <u>474</u>
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	9	<del>((493))</del> <u>438</u>
		1	<del>((384))</del> <u>286</u>
		2	<del>((474))</del> <u>396</u>
		3	<del>((375))</del> <u>384</u>
		4	<del>((408))</del> <u>344</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
		5	<del>((512))</del> 339
		9	<del>((370))</del> 272
Western Red-cedar <sup>(4)</sup>	RC	1-5	<del>((1251))</del> 1045
		9	<del>((1237))</del> 1031
Ponderosa Pine <sup>(5)</sup>	PP	1-5	<del>((207))</del> 187
		9	<del>((193))</del> 173
Red Alder	RA	1-5	<del>((661))</del> 655
		9	<del>((647))</del> 641
Black Cottonwood	BC	1-5	<del>((90))</del> 79
		9	<del>((76))</del> 65
Other Hardwood	OH	1-5	<del>((335))</del> 337
		9	<del>((321))</del> 323
Douglas-fir Poles & Piles	DFL	1-5	<del>((845))</del> 758
		9	<del>((831))</del> 744
Western Red-cedar Poles	RCL	1-5	<del>((1483))</del> 1428
		9	<del>((1469))</del> 1414
Chipwood <sup>(6)</sup>	CHW	1-5	<del>((16))</del> 15
		9	<del>((14))</del> 13
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-9	285
Posts <sup>(8)</sup>	LPP	1-9	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-9	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-9	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

**Washington State Department of Revenue**  
**EASTERN WASHINGTON STUMPAGE VALUE TABLE**  
**((January)) July 1 through ((June 30)) December 31, 2019**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	6	<del>\$((315))</del> 296
		7	<del>((329))</del> 310
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	6	<del>((272))</del> 302
		7	<del>((286))</del> 316
Western Red-cedar <sup>(4)</sup>	RC	6	<del>((1193))</del> 1037
		7	<del>((1207))</del> 1051
Ponderosa Pine <sup>(5)</sup>	PP	6	<del>((193))</del> 173
		7	<del>((207))</del> 187
Other Hardwood	OH	6	9
		7	9
Western Red-cedar Poles	RCL	6	<del>((1444))</del> 1373
		7	<del>((1458))</del> 1387
Chipwood <sup>(6)</sup>	CHW	6	1
		7	1
Small Logs <sup>(6)</sup>	SML	6	<del>((23))</del> 21
		7	<del>((25))</del> 23
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	6-7	285
Posts <sup>(8)</sup>	LPP	6-7	0.35

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
DF Christmas Trees <sup>(9)</sup>	DFX	6-7	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	6-7	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6-7.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through June 30, 2019:

**TABLE 9—Harvest Adjustment Table**  
**Stumpage Value Areas 1, 2, 3, 4, 5, and 9**  
 ((January)) July 1 through ((June 30)) December 31, 2019

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table**  
**Stumpage Value Areas 6 and 7**  
 ((January)) July 1 through ((June 30)) December 31, 2019

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	

III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

**WSR 19-14-020**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

[Filed June 24, 2019, 8:25 a.m., effective July 25, 2019]

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

Purpose: The agency is revising WAC 182-501-0060 and 182-501-0065 to reflect new coverage for hearing hardware for clients age twenty-one and older effective January 1, 2019. The agency is also updating the table in WAC 182-501-0060 and the description of service categories in WAC 182-501-0065 to reflect current agency policy.

Citation of Rules Affected by this Order: Amending WAC 182-501-0060 and 182-501-0065.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; E2SSB 5179, 65th legislature, 2018 regular session.

Adopted under notice filed as WSR 19-10-027 on April 23, 2019.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
182-501-0065 (1)[(2)](c)		
Proposed	(c) Behavioral health services - (chapters 182-538D and 246-341 WAC).	To add more specificity to the rule citations.
Adopted	(c) Behavioral health services - (chapter 182-538D WAC, Behavioral health services, WAC 182-531-1400, Psychiatric physician-related services and other professional mental health services, and chapter 246-341 WAC, Behavioral health services administrative requirements).	

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 2, 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 0.

Date Adopted: June 24, 2019.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-07-083, filed 3/17/15, effective 4/17/15)

**WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories.** (1) This rule provides a table that lists:

(a) The following Washington apple health ((WAH)) programs:

- (i) The alternative benefits plan (ABP) medicaid;
- (ii) Categorically needy (CN) medicaid;
- (iii) Medically needy (MN) medicaid; and
- (iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and

(b) The benefit packages showing what service categories are included for each program.

(2) Within a service category included in a benefit package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit package:

(a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.

(d) Are paid for by the agency or ((its)) the agency's designee and subject to review both before and after payment is

made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or ((its)) the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or ((its)) the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

(b) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients twenty years of age and younger, and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN <sup>1</sup> 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y		Y	Y	Y	Y	Y
Applied behavior analysis (ABA)	Y	N	Y	N	Y	N	N
Behavioral health services	Y	Y	Y	Y	Y	Y	Y
((• Mental health (MH) inpatient care	Y	Y	Y	Y	Y	Y	Y
• MH outpatient community care	Y	Y	Y	Y	Y	Y	Y <sup>2</sup>
• MH psychiatric visits	Y	Y	Y	Y	Y	Y	Y <sup>2</sup>
• MH medication management	Y	Y	Y	Y	Y	Y	Y
• Substance use disorder (SUD) detoxification	Y	Y	Y	Y	Y	Y	Y
• SUD diagnostic assessment	Y	Y	Y	Y	Y	Y	Y
• SUD residential treatment	Y	Y	Y	Y	Y	Y	Y
• SUD outpatient treatment	Y	Y	Y	Y	Y	Y	Y))
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y
Dental services	Y	Y	Y	Y	Y	Y	Y
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y

Service Categories	ABP 20-	ABP 21+	CN <sup>1</sup> 20-	CN 21+	MN 20-	MN 21+	MCS
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N
<u>Enteral nutrition program</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
Habilitative services	Y	Y	N	N	N	N	N
Health care professional services	Y	Y	Y	Y	Y	Y	Y
<u>Health homes</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y
Hearing aids	Y	<del>((N))</del> <u>Y</u>	Y	<del>((N))</del> <u>Y</u>	Y	<del>((N))</del> <u>Y</u>	<del>((N))</del> <u>Y</u>
Home health services	Y	Y	Y	Y	Y	Y	Y
<u>Home infusion therapy/parenteral nutrition program</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
Hospice services	Y	Y	Y	Y	Y	Y	N
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y
Medical equipment, <del>((durable (DME)))</del> <u>supplies, and appliances</u>	Y	Y	Y	Y	Y	Y	Y
<del>((Medical equipment, nondurable (MSE))</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>
Medical nutrition <del>((services))</del> <u>therapy</u>	Y	<del>((Y))</del> <u>N</u>	Y	<del>((Y))</del> <u>N</u>	Y	<del>((Y))</del> <u>N</u>	Y
Nursing facility services	Y	Y	Y	Y	Y	Y	Y
Organ transplants	Y	Y	Y	Y	Y	Y	Y
Orthodontic services	Y	N	Y	N	Y	N	N
Out-of-state services	Y	Y	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	N	Y
Personal care services	Y	Y	Y	Y	N	N	N
Prescription drugs	Y	Y	Y	Y	Y	Y	Y
Private duty nursing	Y	Y	Y	Y	Y	Y	N
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y
Reproductive health services	Y	Y	Y	Y	Y	Y	Y
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y
School-based medical services	Y	N	Y	N	Y	N	N
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N

- 1 Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.
- ~~(2 Restricted to incapacity-based MCS clients enrolled in managed care.~~
- ~~3 Incapacity-based MCS clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.)~~

**AMENDATORY SECTION** (Amending WSR 14-06-045, filed 2/26/14, effective 3/29/14)

**WAC 182-501-0065 Health care coverage—Description of service categories.** This rule provides a brief description of the medical, dental, mental health, and substance use disorder (SUD) service categories listed in the table in WAC 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For alternative benefits plan (ABP), categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the follow-

ing descriptions for specific details regarding each service category.

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in agency rules:

(a) **Ambulance** - Emergency medical transportation and ambulance transportation for nonemergency medical needs. (WAC 182-546-0001 through 182-546-4000.)

(b) **Applied behavior analysis (ABA)** - ~~((WAC 182-531-1410 through 182-531-1434))~~ (Chapter 182-531A WAC).



(c) **Behavioral health services** - ~~((i) Mental health inpatient care—Voluntary and involuntary admissions for psychiatric services. (WAC 182-550-2600.)~~

~~(ii) Mental health outpatient (community mental health) services—Nonemergency, psychological evaluation, nonurgent counseling. (WAC 182-531-1400, 388-865-0215, 388-865-0230, and 388-865-0610 (1)(d)(i).)~~

~~(iii) Psychiatric visits. (WAC 182-531-1400 and 388-865-0230.)~~

~~(iv) Mental health medication management. (WAC 182-531-1400.)~~

~~(v) Substance use disorder (SUD) detoxification. (WAC 388-877B-0100 through 388-877B-0130 and 182-550-1100; WAC 182-556-0400(3).)~~

~~(vi) SUD diagnostic assessment. (WAC 388-877B-0500 through 388-877B-0550.)~~

~~(vii) SUD residential treatment. (WAC 388-877B-0200 through 388-877B-0280.)~~

~~(viii) SUD outpatient treatment. (WAC 388-877B-0300 through 388-877B-0370; WAC 182-533-0701 through 182-533-0730.)) (Chapter 182-538D WAC, Behavioral health services, WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services, and chapter 246-341 WAC, Behavioral health services administrative requirements).~~

(d) **Blood, blood products, and related services** - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (WAC 182-550-1400 and 182-550-1500.)

(e) **Dental services** - Diagnosis and treatment of dental problems including emergency treatment and preventive care. (Chapters 182-535 and 182-535A WAC.)

(f) **Diagnostic services** - Clinical testing and imaging services. (WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.)

(g) **Early and periodic screening, diagnosis, and treatment (EPSDT)** - (Chapter 182-534 WAC and WAC 182-501-0050(10).)

(h) **Enteral nutrition program** - Enteral nutrition products, equipment, and related supplies. (Chapter 182-554 WAC.)

(i) **Habilitative services** - (Chapter 182-545 WAC.)

~~((h))~~ (j) **Health care professional services** - The following services found in chapter 182-531 WAC:

(i) Office visits(;) and vaccinations(;) ;

(ii) Screening/brief intervention/referral to treatment (SBIRT), emergency room, and nursing facility(;) services;

(iii) Home-based(;) and hospital-based (~~care~~) services;

(iv) Surgery, anesthesia, pathology, radiology, and laboratory services;

(v) Obstetric services;

(vi) Kidney dialysis and renal disease services; (~~osteopathic care, podiatry services~~)

(vii) Advanced registered nurse practitioner, naturopathy, osteopathy, podiatry, physiatry, and pulmonary/respiratory services; and

(viii) Allergen immunotherapy services. (~~Chapter 182-531 WAC.~~)

(j))

(k) **Health homes** - (Chapter 182-557 WAC.)

(l) **Hearing evaluations** - The following services found in WAC 182-531-0375:

(i) Audiology;

(ii) Diagnostic evaluations; and

(iii) Hearing exams and testing. (~~(WAC 182-531-0100 and 182-531-0375.)~~)

~~(k))~~

(m) **Hearing aids** - (Chapter 182-547 WAC.)

~~((h))~~ (n) **Home health services** - Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (WAC 182-551-2000 through 182-551-2220.)

~~((m))~~ (o) **Home infusion therapy/parenteral nutrition program** - Supplies and equipment necessary for parenteral infusion of therapeutic agents. (Chapter 182-553 WAC.)

(p) **Hospice services** - Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (WAC 182-551-1210 through 182-551-1850.)

~~((m))~~ (q) **Hospital services—Inpatient/outpatient** - Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. (Chapter 182-550 WAC.)

~~((o))~~ (r) **Intermediate care facility/services for persons with intellectual disabilities** - Habilitative training, health-related care, supervision, and residential care. (Chapter 388-835 WAC.)

~~((p))~~ (s) **Maternity care and delivery services** - Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case management services, family planning services and community health worker visits. (WAC 182-533-0330.)

~~((q))~~ (t) **Medical equipment, ( ~~durable (DME)~~) supplies, and appliances** - Medical equipment and appliances, including wheelchairs, hospital beds, respiratory equipment; casts, splints, crutches, trusses, and braces. Medical supplies, including antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, syringes, needles, and urological supplies. (Chapter 182-543 WAC.)

~~((r))~~ **Medical equipment, nondurable (MSE)** - Antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, pregnancy test kits, syringes, needles, and urological supplies. (Chapter 182-543 WAC.)

(s) **Medical nutrition services**—Enteral and parenteral nutrition, including supplies. (Chapters 182-553 and 182-554 WAC.)

~~((t))~~ (u) Medical nutrition therapy - Outpatient medical nutrition therapy and associated follow-ups. (Chapter 182-555 WAC.)

~~(v)~~ Nursing facility services - Nursing, therapies, dietary, and daily care services delivered in a licensed nursing facility. (Chapter 388-97 WAC.)

~~((u))~~ ~~Organ transplants~~ - Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (WAC 182-550-1900 and 182-556-0400.)

~~(v)~~ (w) Organ transplants - Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (WAC 182-550-1900 and 182-556-0400.)

~~(x)~~ Orthodontic services - (Chapter 182-535A WAC.)

~~((w))~~ (y) Out-of-state services - (WAC 182-502-0120).

~~((z))~~ (z) Outpatient rehabilitation services (OT, PT, ST) - Evaluations, assessments, and treatment. (WAC 182-545-200.)

~~((y))~~ (aa) Personal care services - Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (~~(WAC 388-106-0010, 388-106-0200, 388-106-0300, 388-106-0600, 388-106-0700, 388-106-0745, and 388-106-0900)~~) Chapters 388-106 and 388-845 WAC.

~~((z))~~ (bb) Prescription drugs - Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

~~((aa))~~ (cc) Private duty nursing - Continuous skilled nursing services provided in ~~((the home))~~ a private residence, including client assessment, administration of treatment, and monitoring of medical equipment and client care. For benefits for clients ~~((seventeen years of age and under. (WAC 182-551-3000.))~~) age seventeen and younger, see WAC 182-551-3000 through 182-551-3400. For benefits for clients age eighteen ~~((years of age))~~ and older, see WAC 388-106-1000 through 388-106-1055.

~~((bb))~~ (dd) Prosthetic/orthotic devices - Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (WAC 182-543-5000.)

~~((ee))~~ (ee) Reproductive health services - Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-001 through 182-532-140.)

~~((dd))~~ (ff) Respiratory care (oxygen) - All services, oxygen, equipment, and supplies related to respiratory care. (Chapter 182-552 WAC.)

~~((ee))~~ (gg) School-based ((medical)) health care services - ~~((Medical))~~ Early intervention services or special education health-related services provided in schools to medicaid-eligible children ~~((with disabilities under the Individuals~~

~~with Disabilities Education Act (IDEA))~~ ages birth through twenty who have an individualized education program (IEP) or individualized family service plan (IFSP). (Chapter 182-537 WAC.)

~~((ff))~~ (hh) Vision care - Eye exams, refractions, fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (WAC 182-531-1000.)

~~((gg))~~ (ii) Vision hardware - Frames and lenses. (Chapter 182-544 WAC.)

## WSR 19-14-031

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 25, 2019, 9:19 a.m., effective July 26, 2019]

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

Purpose: The department is amending WAC 388-78A-2460 Quality assurance committee, to assure compliance with requirements of RCW 18.20.390, which governs quality assurance committees in assisted living facilities.

Citation of Rules Affected by this Order: Amending WAC 388-78A-2460.

Statutory Authority for Adoption: Chapter 18.20 RCW, RCW 18.20.090.

Adopted under notice filed as WSR 19-06-052 on March 4, 2019.

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 1, Repealed 0.

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

Date Adopted: June 24, 2019.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-05-035, filed 2/12/14, effective 3/15/14)

**WAC 388-78A-2460 Quality assurance committee.**  
(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any assisted living facility licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the assisted living facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombuds program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the assisted living facility refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the assisted living facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the assisted living facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with assisted living facility requirements, the documents are (~~not~~) protected as quality assurance committee documents when in the possession of the department.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against an assisted living facility.

(7) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

shed planning projects under RCW 90.94.020, watershed restoration and enhancement projects under RCW 90.94.030, and the collection of data and completion of studies necessary to develop, implement, and evaluate watershed restoration and enhancement projects under chapter 1, Laws of 2018, statewide.

Citation of Rules Affected by this Order: New chapter 173-566 WAC.

Statutory Authority for Adoption: RCW 90.54.040 Water Resources Act of 1971, RCW 43.21A.080 Department of ecology, and chapter 90.94 RCW, Streamflow Restoration Act.

Adopted under notice filed as WSR 19-03-124 on January 17, 2019.

Changes Other than Editing from Proposed to Adopted Version: Clarified purpose to highlight the intent to fund all types of projects identified in a chapter 90.94 RCW plan or rule making. Pared down the detail on cultural resource review as the process can vary. Modified the definition of "consumptive use" to more closely match the Wikipedia definition. Removed definition of new domestic permit-exempt wells. Defined "planning WRIA" to clarify that the basins directed to plan by chapter 90.94 RCW retained priority after planning ended. Added "watershed function" to riparian and fish habitat improvement section to allow funding of upland projects that still benefit instream resources. Revised definition of a retroactive cost to one incurred before the grant agreement effective date, rather than the signature date, to match agency grant and loan standard practice. Revised appeal process.

A final cost-benefit analysis is available by contacting Rebecca Inman, Department of Ecology, Water Resources Program, U.S. Mail P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6450, TTY people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email [rebecca.inman@ecy.wa.gov](mailto:rebecca.inman@ecy.wa.gov), web site [https://fortress.wa.gov/ecy/publications/Summary\\_pages/1911074.html](https://fortress.wa.gov/ecy/publications/Summary_pages/1911074.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 22, 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 22, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 22, 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: June 25, 2019.

Maia D. Bellon  
Director

### WSR 19-14-033

#### PERMANENT RULES

#### DEPARTMENT OF ECOLOGY

[Order 18-05—Filed June 25, 2019, 12:16 p.m., effective July 26, 2019]

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

Purpose: Chapter 173-566 WAC, Streamflow restoration funding, is a new rule for the implementation of chapter 1, Laws of 2018 (ESSB 6091) and chapter 90.94 RCW. The streamflow restoration funding program will finance water-

## Chapter 173-566 WAC

## STREAMFLOW RESTORATION FUNDING

NEW SECTION

**WAC 173-566-010 Purpose.** (1) In the adoption of the Streamflow Restoration Act, the legislature stated the intent to appropriate three hundred million dollars for projects to achieve the goals of the act until June 30, 2033. They further directed ecology to implement a program to restore and enhance streamflows by fulfilling obligations under the act to develop and implement plans to restore streamflows to levels necessary to support robust, healthy, and sustainable salmon populations.

(2) This chapter contains general rules for project grant eligibility, selection, issuance, and performance, and applies to projects statewide pursuant to and consistent with chapter 90.94 RCW to:

- (a) Protect and enhance streamflows.
- (b) Improve watershed functions that benefit instream fish and wildlife resources.
- (c) Offset the consumptive use impacts from new domestic permit-exempt wells.
- (d) Implement other projects identified in an RCW 90.94.020 watershed plan update, an RCW 90.94.030 watershed restoration and enhancement plan, or through a rule-making process to meet the requirements of RCW 90.94.020 or 90.94.030.

NEW SECTION**WAC 173-566-020 Relation to other laws and rules.**

(1) This chapter only applies to grants issued by ecology that are funded under chapter 90.94 RCW, Streamflow restoration.

(2) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grants.

(3) **State Environmental Policy Act.** State Environmental Policy Act (SEPA) review must be completed before ecology may sign a funding agreement for construction projects or before construction begins for combined design/construction projects.

**(4) Cultural resource review.**

(a) Any federal or state cultural resources requirements must be completed prior to the start of any work on a project site.

(b) Grant recipients must take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources.

(5) **Water quality.** All funded projects must protect water quality and comply with relevant water quality standards.

(6) **Permits.** Recipients must obtain and comply with all required permits.

(7) **Puget Sound action agenda.** Ecology may not fund projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

NEW SECTION

**WAC 173-566-030 Definitions.** Definitions provided only apply to this chapter.

"Agreement effective date" means the date on which the grant or loan agreement becomes effective, as specified in the grant agreement.

"Agreement expiration date" means the latest date eligible costs can be incurred, as specified in the grant agreement.

"Applicant" means an entity that applies for a grant. See "eligible applicants" and "ineligible applicant."

"Biennium" means the twenty-four-month fiscal period extending from July 1st of odd-numbered years to June 30th of odd-numbered years.

"Budget" means, for the purpose of grant agreements, a breakdown of eligible costs by task.

"Consumptive use" is the difference between the quantity of water withdrawn from the watershed for use and what is returned through a septic system or other means.

"Ecology" means the Washington state department of ecology.

"Eligible applicants" includes Washington state agencies, local governments and quasi-governments within Washington state, an agency of the federal government, tribal governments with reservation lands or treaty rights within Washington, and nonprofit organizations.

"Eligible cost" means a cost that meets all criteria established in the agreement and grant program funding guidelines.

"Funding cycle" means the period between announcements of grant opportunities under this chapter.

"Grant agreement" or "agreement" means the formal, written, contractual document that details the terms and conditions, scope of work, budget, and schedule of the grant, and that is signed by authorized signatories of the recipient and ecology.

"Grant" means an award of financial assistance given to a recipient to carry out work for a public purpose or public good authorized by law.

"Ineligible applicant" means a private citizen, for-profit business including, but not limited to, all forms of private partnerships, incorporated entities, LLCs, foreign or out-of-state governments, or any agents acting on behalf of such entities.

"Instream resources" for the purposes of this chapter means fish and related aquatic resources.

"Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation.

"Planning WRIA" means any of the water resource inventory areas (WRIAs) identified in chapter 90.94 RCW and directed to create or update a watershed plan.

"Recipient" means an entity that has a grant agreement.

"Retroactive costs" means costs incurred before the agreement effective date.

"Scope of work" means the tasks and deliverables of the grant agreement.

"Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehi-

cle, rolling stock, vessel or aircraft, or any area where project tasks take place.

"Watershed" means a geographic area draining to a stream or tributary.

"Watershed plan" means a watershed plan update adopted under RCW 90.94.020 or a watershed restoration and enhancement plan adopted under RCW 90.94.030.

"WRIA" means a water resource inventory area as established in chapter 173-500 WAC.

#### NEW SECTION

**WAC 173-566-100 Grant award process.** (1) Ecology will develop guidance to assist in implementing this chapter.

(2) Project solicitation. Ecology will provide notice of a new funding cycle, pursuant to WAC 173-566-110 at least once per biennium.

(3) Application. Grant applications must contain sufficient information to make the determinations in subsection (4) of this section.

(4) Project evaluation and ranking. Ecology will review projects and applications for completeness and to determine:

- (a) Project eligibility under WAC 173-566-310;
- (b) Project quality under WAC 173-566-140; and
- (c) Funding priority under WAC 173-566-150.

(5) Agreement development. After deciding to fund an eligible project, ecology will negotiate with the applicant the scope of work and budget for the grant and develop the agreement.

#### NEW SECTION

**WAC 173-566-110 Grant announcements.** (1) Ecology will announce the availability of funding opportunities for competitive grants. The announcement will include, at a minimum, a description of:

- (a) Purpose of the grants.
- (b) Funding cycle for the grants.
- (c) Amount of funding available or anticipated amount of funding available, if known.
- (d) Eligibility criteria for the grant solicitation.
- (e) Information about how to apply.
- (f) Application deadlines.
- (g) Ecology contact information.

(2) To publicize funding opportunities, ecology will issue a news release, post information on our web site, and may use other methods, including social media.

(3) **Unused funds.** Ecology may announce the availability of unused funds, or retain the funds for a future funding cycle or to cover future contingencies that meet the purposes and intent of this chapter and chapter 90.94 RCW.

#### NEW SECTION

**WAC 173-566-120 Application.** (1) All applicants must use the electronic system identified by ecology to apply for grants. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

- (a) Applicant information.

(b) Project location and description.

(c) Requested funding amount and budget for the project.

(d) Description of project benefit(s), including:

- (i) Problem(s) or need(s) the project would address.
- (ii) Timing, location, and extent that the project is expected to address the identified needs.

- (iii) Estimates of the rate and volume of conserved water.
- (iv) Method(s) used to determine project benefits.

- (v) How any monitoring, operations, maintenance, or other measures will be addressed to ensure benefits persist over time.

- (vi) Metrics for project success, including quantitative metrics if available.

- (e) Scope of work and tasks for the project.
- (f) Source of project water, if applicable, and how water will be managed to ensure there will be no impairment to senior water rights.

- (g) Permits that have been obtained, applied for, or otherwise identified as necessary to execute the project.

- (h) How aquatic species and water quality will be protected.

- (i) Any other information required by ecology to evaluate the project.

(3) Ecology may require a feasibility study if the applicant cannot supply sufficient detail in the application. Applicants may apply for a grant to complete the feasibility study.

(4) The applicant must submit a complete application by the due date and time, if a due date and time are included in the announcement. Ecology may approve a later due date by posting notice of the extended application deadline on ecology's web site.

(5) Ecology may request additional information to assist in the application evaluation process. If the applicant fails to comply with the request, ecology may determine the application is incomplete and remove it from further consideration.

(6) Applicants may submit a new application for a project that was not funded for any reason in a prior funding cycle.

#### NEW SECTION

**WAC 173-566-130 Phasing.** (1) Applicants may choose to divide projects into phases, particularly when each phase can be shown to benefit streamflow or instream resources.

(2) Ecology reserves the right to divide a project into phases and fund initial project phase(s) due to funding availability and priorities, or other considerations.

(3) Funding for one or more phases of a project does not guarantee funding for subsequent phases.

#### NEW SECTION

**WAC 173-566-140 Evaluation process.** (1) Ecology will evaluate all complete applications submitted by the announced deadline.

(2) Ecology will review applications to determine eligibility of the applicant under WAC 173-566-030, and whether the project meets the eligibility criteria.

(3) For those grant applications determined eligible, ecology will then evaluate for project quality. To complete this evaluation, ecology will consider:

- (a) Benefits to streamflow and instream resources.
- (b) Whether the application demonstrates all of the following:
  - (i) Appropriateness of the project to address the stated needs.
  - (ii) Feasibility of the project, including the likelihood of success and long-term sustainability.
  - (iii) Whether the project is an effective use of available funds, considering need, as well as costs and benefits.
  - (iv) Readiness to proceed.
- (c) Information gathered from field visits that may be part of the evaluation.
- (4) The funding priorities described in WAC 173-566-150, and related grant guidance and criteria for the current funding cycle, will be used to produce the project scores. Scoring of the eligible project applications, taking account of both project quality and funding priorities, will be used to determine relative ranking for awarding grants.
- (5) Ecology may set a minimum score that an application has to receive for ecology to offer funds.

#### NEW SECTION

**WAC 173-566-150 Funding priorities.** In addition to the evaluation of project quality described in WAC 173-566-140, ecology will give added priority to projects under each of the following three independent criteria:

- (1) Geographic location. Projects located in:
  - (a) A planning WRIA identified in RCW 90.94.020 or 90.94.030; or
  - (b) A metering pilot project area as designated in RCW 90.94.040.
- (2) Projects, consistent with the priority and sequencing within the watershed plan or rule-making documentation, identified:
  - (a) In a watershed plan adopted under RCW 90.94.020 or 90.94.030; or
  - (b) Through a rule-making process to meet the requirements of RCW 90.94.020 or 90.94.030.
- (3) Projects that improve streamflows or enhance instream resources and watershed functions which benefit:
  - (a) Threatened and endangered salmonids (higher preference); or
  - (b) Other native fish and aquatic species of concern.

#### NEW SECTION

**WAC 173-566-200 Water right acquisitions.** (1) The purchase of all or a portion of a water right is eligible for funding if the following project elements are included:

- (a) Changing the water right purpose of use to instream flow under RCW 90.03.380.
- (b) Permanent conveyance of the water right to ecology to be held in the trust water rights program.
- (2) Funding may be provided for work related to preliminary assessment and price valuation when ecology determines that such work is necessary to complete a suitable water right acquisition.

(3) Applicants proposing water right acquisition projects must have a preapplication meeting with ecology.

#### NEW SECTION

**WAC 173-566-210 Water storage.** Water storage projects eligible for funding include above ground storage and below ground storage, and can be within natural formations, or man-made. Examples include off-channel surface water storage, managed aquifer recharge, infiltration galleries or ponds, and cisterns.

#### NEW SECTION

**WAC 173-566-220 Altered water management or infrastructure.** (1) Water management and infrastructure improvement projects eligible for funding involve changes in how and when water is diverted, withdrawn, conveyed, or used to benefit streamflows and instream resources to implement chapter 90.94 RCW. Examples include conservation and efficiency projects such as diversion modifications, lining and piping, sprinkler conversion, and other irrigation efficiencies, as well as source switches, and streamflow retiming projects. Innovative methods will be considered.

(2) Projects must include sufficient provisions and protections so that completed projects will provide either or both:

- (a) Permanent streamflow improvement.
- (b) Access to new water supplies when identified in a watershed plan adopted under RCW 90.94.020 or 90.94.030.
- (3) To meet subsection (2) of this section, conservation and water use efficiency projects must permanently convey the saved water to ecology to be held in the trust water rights program for instream flow purposes.

#### NEW SECTION

**WAC 173-566-230 Watershed function, riparian and fish habitat improvements.** Projects that might not directly increase streamflow, but do benefit instream resources, may be funded through this chapter. Examples include, but are not limited to, in-channel habitat improvements, riparian restoration, strategic land acquisitions, levee modifications, floodplain modifications, fish passage, and beaver introduction.

#### NEW SECTION

**WAC 173-566-240 Environmental monitoring.** (1) Environmental monitoring equipment is eligible for funding, including equipment for stream gauging and groundwater monitoring directly related to restoring, maintaining, or enhancing streamflows or instream resources and values.

(2) Effectiveness monitoring for projects funded under this chapter is eligible for funding.

(3) Recipients must follow all grant requirements for submittal of environmental monitoring data, and standards when geographic information system (GIS) data are collected, processed, and submitted to ecology.

NEW SECTION**WAC 173-566-300 Fiscal controls.****Determining allocation of funding.**

(1) For each funding cycle, ecology may allocate a percent of available funding to certain project types, which will be identified in the grant guidance. Funding allocation may be based on demonstrated need, previous funding awarded, or other criteria.

(2) Ecology may set aside a percentage of available funding each funding cycle for projects in each ecology region or other geographical areas. Ecology will update the funding guidance with set aside amounts prior to the beginning of the funding cycle.

(3) Ecology may set a ceiling amount to limit the amount of grant funding available to any one applicant per funding cycle. The ceiling amount will be included in the funding guidance.

**Grant decisions.**

(4) When awarding grants, ecology decisions will be:

(a) Consistent with all state laws and rules authorizing the funding and any specific direction by the legislature.

(b) Subject to available funds.

(c) Based on evaluations of grant applications submitted and other relevant information available.

**Funding discretion.**

(5) Ecology retains the discretion to not provide a grant for an eligible project or to provide less funding for an eligible project than the amount requested.

(6) Ecology has the discretion to:

(a) Hold funds:

(i) To cover cost overruns on funded projects; or

(ii) To use in later funding cycles.

(b) Award unused funds to lower ranked projects following the initial grant awards in the funding cycle.

**Grant management.**

(7) Ongoing management of most aspects of grant projects is subject to the most recent edition of administrative requirements for ecology grants, such as *Administrative Requirements for Recipients of Ecology Grants Managed in EAGL*.

(8) Retroactive costs. Any costs incurred before the agreement effective date are at the recipient's risk.

(9) Ecology will establish reasonable costs for all grants, and require recipients to manage projects in a cost-effective manner. Ecology may require grant recipients to periodically update a spending plan for the grant.

(10) Ecology may withdraw or modify a funding offer if the recipient makes a request to significantly change the scope of work after the award.

(11) Ecology has the right to withdraw funding and not approve expenditures that do not follow appropriate contracting process.

NEW SECTION**WAC 173-566-310 Ineligible projects and costs.**

Costs that are ineligible to receive grant funding under this chapter include, but are not limited to:

(1) Project elements previously funded by ecology.

(2) Projects that are otherwise required under statute, rule, ordinance, or court order, except pursuant to this chapter and chapter 90.94 RCW.

(3) Costs to meet an individual or general National Pollutant Discharge Elimination System (NPDES) permit.

(4) Staff time not directly related to the project.

(5) Major and capital equipment purchases without pre-approval from ecology.

(6) Contaminated soils removal or remediation.

(7) Projects that conflict with other ecology rules, projects, or guidance.

(8) Aquatic plant control for aesthetic purposes, navigational improvements, or any other reason that does not provide increased streamflow, nor benefit ecological functions or critical stream habitat.

(9) Bond costs for debt issuance.

(10) Operation and maintenance costs.

(11) Bonus or acceleration payments to contractors to meet contractual completion dates for construction.

(12) Compensation or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential.

(13) Dispute resolution under the grant agreement.

(14) Office furniture not included in the recipient's indirect rate.

(15) Operating expenses of local government, such as the salaries and expenses of a mayor, city councilmember, and city attorney.

(16) Overtime differential paid to employees of a public body to complete administrative or force account work.

(17) Permit fees not directly required for the completion of the project.

(18) Professional dues.

(19) Property purchases without prior approval from ecology.

(20) Refinance of existing debt.

NEW SECTION

**WAC 173-566-320 Grant agreement.** (1) Ecology will work with the recipient to prepare the grant agreement.

(2) A grant agreement issued and managed in ecology's electronic system must include, at a minimum:

(a) Project description.

(b) Expected outcomes.

(c) Project budget and funding distribution.

(d) Agreement effective date and expiration date.

(e) Description of tasks and deliverables.

(f) Contact information for ecology and the recipient.

(g) Signatures of authorized signatories.

(h) General terms and conditions that specify requirements related, but not limited to:

(i) Amendments and modifications.

(ii) Assignment limits on transfer of rights or claims.

(iii) Inadvertent discovery plan for human remains and/or cultural resources.

(iv) Compliance with all laws.

(v) Conflict of interest.

- (vi) Disputes.
- (vii) Environmental data standards.
- (viii) Governing law.
- (ix) Indemnification.
- (x) Independent status of the parties to the agreement.
- (xi) Order of precedence for laws, rules, and the agreement.
- (xii) Property rights, copyrights, and patents.
- (xiii) Records, audits, and inspections.
- (xiv) Recovery of funds.
- (xv) Severability.
- (xvi) Suspension.
- (xvii) Sustainable practices.
- (xviii) Termination.
- (xix) Third-party beneficiary.
- (xx) Waiver of agreement provisions.
- (i) Special terms and conditions, if any.
- (j) Agreement-specific terms and conditions, if any.
- (k) Other items, if any, necessary to meet the goals of the grant program.

(3) All grant agreements under this chapter will include the latest version, as of the original agreement date, of ecology's grant general terms and conditions.

(4) Ecology may choose to extend a grant agreement at our sole discretion.

#### NEW SECTION

**WAC 173-566-330 Amendments to the grant agreement.** (1) A change to any of the following items will require an executed amendment to the agreement prior to the grantee being eligible for cost reimbursement due to such change:

- (a) Scope of work or the objectives of the project.
- (b) Total project budget, whether for an increase or decrease.
- (c) Grant funding, whether for an increase or decrease.
- (d) Redistributing costs among budget tasks that exceed ten percent deviation of the total eligible costs of the funding distribution.
- (e) Funding distributions.
- (f) Agreement effective or expiration date, whether to shorten or extend.
- (g) Special terms and conditions or agreement-specific terms and conditions.

(2) Administrative changes do not require an amendment. Examples of administrative changes include updates to contact names, addresses, and phone numbers.

(3) An amendment must be signed by all parties before it is effective.

#### NEW SECTION

##### **WAC 173-566-340 Performance standards.**

###### **General provisions.**

(1) Nothing in this chapter influences, affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant.

(2) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant agreements and records.

(3) New ecology grant agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by ecology.

(4) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

###### **Recipient standards.**

(5) Recipients must:

- (a) Follow all applicable accounting and auditing laws and rules related to grants.
- (b) Use funds according to the agreement.
- (c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules.
- (d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement.
- (e) Obtain preapproval for equipment purchases over the amount specified in the agreement.

(6) As specified in the grant agreement, the recipient must submit the following to ecology:

- (a) Progress reports.
- (b) Payment requests.
- (c) Equipment purchase reports.
- (d) Documentation.
- (e) A final closeout report.
- (f) Any other required information.

###### **Ecology standards.**

(7) Ecology will:

- (a) Follow all applicable accounting and auditing laws and rules related to grants.
- (b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement.
- (c) Confirm that ecology has received required documentation and the project is satisfactorily completed before approving final payment.

#### NEW SECTION

**WAC 173-566-350 Closing out the agreement.** (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant agreement when it determines the recipient has met the closeout requirements or when the agreement has been terminated (see WAC 173-566-360).

#### NEW SECTION

**WAC 173-566-360 Termination of agreement.** (1) Failure by the recipient to comply with a grant agreement may result in termination of the agreement.



(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) Ecology's ability to make payments is contingent on availability of funding. In the event funding from state or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of the agreement, ecology, at its sole discretion, may elect to:

- (a) Terminate the agreement, in whole or part;
  - (b) Renegotiate the agreement, subject to new funding limitations or conditions; or
  - (c) Suspend performance of the agreement until ecology determines the funding insufficiency is resolved.
- (4) Ecology will document the termination of an agreement.

#### NEW SECTION

**WAC 173-566-370 Appeals process.** (1) Prior to filing a formal appeal with a judicial body, grant applicants and recipients may request an internal review of a written decision by ecology using the following procedures. These procedures are intended to encourage the informal resolution of disputes.

(a) The applicant may seek review of an initial funding decision within thirty days of the decision. The applicant or recipient makes the request for review in writing to the water resources program manager.

(b) The program manager will consider the appeal information and will issue a written decision within thirty days from the date the appeal is received.

(c) If the applicant or recipient is not satisfied with the program manager's decision, the applicant or recipient has thirty days to submit a written request to ecology's deputy director for a review of the decision.

(d) Ecology's director or deputy director will consider the appeal information and will issue a written decision within thirty days from the date the request is received. This decision will be ecology's final decision.

(2) Grant applicants and recipients may formally appeal a written decision by ecology to the pollution control hearings board in accordance with the provisions of chapter 43.21B RCW.

This rule amendment allows ecology to continue recovering expenses in operating and managing the permit programs. Ecology is proposing to increase fees for fiscal years 2020 and 2021 in order to collect the revenue needed to recover the costs of administering the wastewater and stormwater programs next biennium and move closer to payment equity between fee categories. Ecology also updated rule language to account for changes in current business practices relating to electronic invoices and introduces a new fee reduction type-market research and development reduction. Ecology is also enacting changes to the structure of specific permit fee categories, including creating the winery general permit fee category.

Citation of Rules Affected by this Order: Amending chapter 173-224 WAC.

Statutory Authority for Adoption: RCW 90.48.465 Water discharge fees—Report to the legislature.

Adopted under notice filed as WSR 19-07-011 on March 7, 2019.

Changes Other than Editing from Proposed to Adopted Version: Ecology's initial proposed language for the market research and development reduction did not capture the intent to focus on a facility's wastewater permitted discharges that these fees are assessed against. Ecology determined the goals and objectives of the authorizing statute are better met by clarifying and editing the eligibility criteria with the potential to reduce wastewater discharge pollutants, permitting complexity, and the associated costs ecology is required to recover. A final cost-benefit analysis is available by contacting Charles Gilman, Department of Ecology, Water Quality Program, P.O. Box 46700, Lacey, WA 98504, phone 800-633-6193 Option 2, TTY 711 for deaf or hard of hearing, 877-833-6341 (Washington relay service), email [wqfee\\_unit@ecy.wa.gov](mailto:wqfee_unit@ecy.wa.gov), web site <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-224>.

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 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 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, 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: June 26, 2019.

Maia D. Bellon  
Director

#### **WSR 19-14-040**

#### **PERMANENT RULES**

#### **DEPARTMENT OF ECOLOGY**

[Order 18-01—Filed June 26, 2019, 1:32 p.m., effective July 27, 2019]

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

Purpose: To establish a fee system for state waste discharge and national pollutant discharge elimination system (NPDES) permits issued by ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260. RCW 90.48.465 requires ecology to establish, by rule, annual fees that will fund the wastewater and stormwater permit programs. Ecology adopted chapter 173-224 WAC, Water quality permit fees, in response to this law.

AMENDATORY SECTION (Amending WSR 94-10-027, filed 4/28/94, effective 5/29/94)

**WAC 173-224-020 Applicability.** This chapter applies to all persons holding or applying for a state waste discharge or NPDES permit issued by the department pursuant to RCW 90.48.160, 90.48.162, 90.48.200 or 90.48.260, including persons holding permits that remain in effect under WAC 173-216-040, 173-220-180(5), or 173-226-050. This chapter does not apply when a wastewater discharge permit is written for a state conducted remedial action under the Model Toxics Control Act. That is, ecology ~~((will))~~ may not charge itself for wastewater discharge permits written for sites where the agency is conducting a cleanup.

AMENDATORY SECTION (Amending WSR 17-16-005, filed 7/20/17, effective 8/20/17)

**WAC 173-224-030 Definitions.** "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400
Dry Cow	1.000
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities

specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the fruit packing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents ~~((will be))~~ are considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for ~~((the))~~ hoisting and lifting ~~((of))~~ ship hulls.

"cu. yds/yr" means the cubic yards per year for total production from ~~((an))~~ a sand and gravel facility ~~((in cubic yards))~~ during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal by-products, excluding fruit packing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Fruit packing" means ~~((the preparation of))~~ preparing fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"gpy" means gallons per year and is used to calculate winery production levels for the most recent completed calendar year.

"Gross revenue for business" means the gross income from Washington business activities.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial stormwater" means a stormwater discharge from an operation required to be covered under ecology's NPDES and state waste discharge general permit for stormwater discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for stormwater only.

"Manufacturing" means ~~((the))~~ making ~~((of))~~ goods and articles by hand or ~~((especially, by machinery))~~ machine into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means ~~((the preparation of))~~ preparing metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"MGD" means ~~((permitted flow expressed in))~~ million gallons per day.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means ~~((the))~~ manufacturing ~~((of))~~ semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating sand and gravel site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that conducts mining or processing

fewer than ninety days per year, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site.

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70.105 and 70.105D RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Sand and gravel" means ~~((the))~~ mining or quarrying ~~((of))~~ sand, gravel, or rock, or ~~((the production of))~~ producing concrete, ~~((of))~~ asphalt, or a combination thereof.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals

(fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means ~~((the activity of))~~ receiving sewage deposited into and ~~((carried off))~~ transported by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW 90.48.160 or 90.48.162.

"Stormwater" means precipitation that flows from an industrial operation or construction activity discharging stormwater runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means ~~((the))~~ washing, packing, ~~((and))~~ and/or shipping ~~((of))~~ fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

**AMENDATORY SECTION** (Amending WSR 17-16-005, filed 7/20/17, effective 8/20/17)

**WAC 173-224-040 Permit fee schedule.** (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee ~~((will be))~~ is assessed for RCRA sites regardless of whether a new permit is ~~((being))~~ issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is ~~((being))~~ modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY <del>((2018))</del> 2020 ANNUAL PERMIT FEE	FY <del>((2019))</del> 2021 ANNUAL PERMIT FEE & BEYOND
Aluminum Alloys	<del>\$(19,707.00))</del> <u>21,768.00</u>	<del>\$(20,807.00))</del> 22,950.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	<del>((110,799.00))</del> <u>115,785.00</u>	115,785.00
b. State Permit	<del>((55,402.00))</del> <u>57,895.00</u>	57,895.00
Aluminum Forming	<del>((59,120.00))</del> <u>65,304.00</u>	<del>((62,420.00))</del> <u>68,850.00</u>
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	<del>((5,635.00))</del> <u>5,889.00</u>	5,889.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
b. Finfish hatching and rearing - General Permit Coverage	((3,947.00)) <u>4,125.00</u>	4,125.00
c. Shellfish hatching	((213.00)) <u>223.00</u>	223.00
Aquatic Pest Control		
a. Irrigation Districts	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
b. Mosquito Control Districts	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
c. Invasive Moth Control	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
d. Aquatic Species Control & Eradication	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
e. Oyster Growers	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
f. Rotenone Control	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
Boat Yards - Individual Permit Coverage		
a. With stormwater only discharge	((505.00)) <u>558.00</u>	((533.00)) <u>588.00</u>
b. All others	((1,008.00)) <u>1,113.00</u>	((1,064.00)) <u>1,173.00</u>
Boat Yards - General Permit Coverage		
a. With stormwater only discharge	((461.00)) <u>509.00</u>	((487.00)) <u>537.00</u>
b. All others	((933.00)) <u>1,031.00</u>	((985.00)) <u>1,087.00</u>
Bridge Washing		
a. Single-site Permit	((3,511.00)) <u>3,839.00</u>	((3,669.00)) <u>4,047.00</u>
b. WSDOT Annual Fee	((11,669.00)) <u>12,757.00</u>	((12,194.00)) <u>13,450.00</u>
Coal Mining and Preparation		
a. < 200,000 tons per year	((7,878.00)) <u>8,702.00</u>	((8,318.00)) <u>9,175.00</u>
b. 200,000 - < 500,000 tons per year	((17,738.00)) <u>19,593.00</u>	((18,728.00)) <u>20,657.00</u>
c. 500,000 - < 1,000,000 tons per year	((31,529.00)) <u>34,827.00</u>	((33,289.00)) <u>36,718.00</u>
d. 1,000,000 tons per year and greater	((59,120.00)) <u>65,304.00</u>	((62,420.00)) <u>68,850.00</u>
Combined Industrial Waste Treatment		
a. < 10,000 gpd	((3,758.00)) <u>3,972.00</u>	3,972.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
b. 10,000 - < 50,000 gpd	((9,393.00)) <u>9,816.00</u>	9,816.00
c. 50,000 - < 100,000 gpd	((18,790.00)) <u>19,636.00</u>	19,636.00
d. 100,000 - < 500,000 gpd	((37,575.00)) <u>39,266.00</u>	39,266.00
e. 500,000 gpd and greater	((56,365.00)) <u>58,901.00</u>	58,901.00
Combined Food Processing Waste Treatment Facilities	((17,988.00)) <u>18,797.00</u>	18,797.00
Combined Sewer Overflow System		
a. < 50 acres	((3,758.00)) <u>3,927.00</u>	3,927.00
b. 50 - < 100 acres	((9,393.00)) <u>9,816.00</u>	9,816.00
c. 100 - < 500 acres	((11,276.00)) <u>11,783.00</u>	11,783.00
d. 500 acres and greater	((15,028.00)) <u>15,704.00</u>	15,704.00
Commercial Laundry	((481.00)) <u>526.00</u>	((503.00)) <u>555.00</u>
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((264.00)) <u>292.00</u>	((279.00)) <u>308.00</u>
b. 200 - < 400 Animal Units	((663.00)) <u>732.00</u>	((700.00)) <u>772.00</u>
c. 400 - < 600 Animal Units	((1,327.00)) <u>1,466.00</u>	((1,401.00)) <u>1,546.00</u>
d. 600 - < 800 Animal Units	((1,990.00)) <u>2,198.00</u>	((2,101.00)) <u>2,317.00</u>
e. 800 Animal Units and greater	((2,657.00)) <u>2,935.00</u>	((2,805.00)) <u>3,094.00</u>
Dairies \$.50 per Animal Unit not to exceed (( <del>\$1,776.00 for FY 2018 and \$1,875.00 for FY 2018</del> )) <u>\$1,969.00 for FY 2020 and \$2,076.00 for FY 2021 &amp; beyond</u>		
Facilities Not Otherwise Classified - Individual Permit Coverage		
a. < 1,000 gpd	((1,878.00)) <u>1,963.00</u>	1,963.00
b. 1,000 - < 10,000 gpd	((3,758.00)) <u>3,927.00</u>	3,927.00
c. 10,000 - < 50,000 gpd	((9,394.00)) <u>9,817.00</u>	9,817.00
d. 50,000 - < 100,000 gpd	((15,028.00)) <u>15,704.00</u>	15,704.00
e. 100,000 - < 500,000 gpd	((29,912.00)) <u>31,258.00</u>	31,258.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
f. 500,000 - < 1,000,000 gpd	((37,575.00)) <u>39,266.00</u>	39,266.00
g. 1,000,000 gpd and greater	((56,364.00)) <u>58,900.00</u>	58,900.00
Facilities Not Otherwise Classified - General Permit Coverage		
a. < 1,000 gpd	((1,318.00)) <u>1,377.00</u>	1,377.00
b. 1,000 - < 10,000 gpd	((2,726.00)) <u>2,849.00</u>	2,849.00
c. 10,000 - < 50,000 gpd	((6,578.00)) <u>6,874.00</u>	6,874.00
d. 50,000 - < 100,000 gpd	((10,523.00)) <u>10,997.00</u>	10,997.00
e. 100,000 - < 500,000 gpd	((21,040.00)) <u>21,987.00</u>	21,987.00
f. 500,000 - < 1,000,000 gpd	((26,300.00)) <u>27,484.00</u>	27,484.00
g. 1,000,000 gpd and greater	((39,456.00)) <u>41,232.00</u>	41,232.00
Flavor Extraction		
a. Steam Distillation	((193.00)) <u>202.00</u>	202.00
Food Processing		
a. < 1,000 gpd	((1,877.00)) <u>1,961.00</u>	1,961.00
b. 1,000 - < 10,000 gpd	((4,788.00)) <u>5,003.00</u>	5,003.00
c. 10,000 - < 50,000 gpd	((8,549.00)) <u>8,934.00</u>	8,934.00
d. 50,000 - < 100,000 gpd	((13,432.00)) <u>14,036.00</u>	14,036.00
e. 100,000 - < 250,000 gpd	((18,788.00)) <u>19,633.00</u>	19,633.00
f. 250,000 - < 500,000 gpd	((24,707.00)) <u>25,819.00</u>	25,819.00
g. 500,000 - < 750,000 gpd	((30,998.00)) <u>32,393.00</u>	32,393.00
h. 750,000 - < 1,000,000 gpd	((37,575.00)) <u>39,266.00</u>	39,266.00
i. 1,000,000 - < 2,500,000 gpd	((46,291.00)) <u>48,374.00</u>	48,374.00
j. 2,500,000 - < 5,000,000 gpd	((51,668.00)) <u>53,993.00</u>	53,993.00
k. 5,000,000 gpd and greater	((56,365.00)) <u>58,901.00</u>	58,901.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
<b>Fruit Packing - Individual Permit Coverage</b>		
a. 0 - < 1,000 bins/yr.	((375.00)) <u>392.00</u>	392.00
b. 1,000 - < 5,000 bins/yr.	((752.00)) <u>786.00</u>	786.00
c. 5,000 - < 10,000 bins/yr.	((1,502.00)) <u>1,570.00</u>	1,570.00
d. 10,000 - < 15,000 bins/yr.	((3,009.00)) <u>3,144.00</u>	3,144.00
e. 15,000 - < 20,000 bins/yr.	((4,975.00)) <u>5,199.00</u>	5,199.00
f. 20,000 - < 25,000 bins/yr.	((6,951.00)) <u>7,264.00</u>	7,264.00
g. 25,000 - < 50,000 bins/yr.	((9,299.00)) <u>9,717.00</u>	9,717.00
h. 50,000 - < 75,000 bins/yr.	((10,335.00)) <u>10,800.00</u>	10,800.00
i. 75,000 - < 100,000 bins/yr.	((12,023.00)) <u>12,564.00</u>	12,564.00
j. 100,000 - < 125,000 bins/yr.	((15,028.00)) <u>15,704.00</u>	15,704.00
k. 125,000 - < 150,000 bins/yr.	((18,788.00)) <u>19,633.00</u>	19,633.00
l. 150,000 bins/yr. and greater	((22,511.00)) <u>23,524.00</u>	23,524.00
<b>Fruit Packing - General Permit Coverage</b>		
a. 0 - < 1,000 bins/yr.	((262.00)) <u>274.00</u>	274.00
b. 1,000 - < 5,000 bins/yr.	((526.00)) <u>550.00</u>	550.00
c. 5,000 - < 10,000 bins/yr.	((1,053.00)) <u>1,100.00</u>	1,100.00
d. 10,000 - < 15,000 bins/yr.	((2,106.00)) <u>2,201.00</u>	2,201.00
e. 15,000 - < 20,000 bins/yr.	((3,486.00)) <u>3,643.00</u>	3,643.00
f. 20,000 - < 25,000 bins/yr.	((4,866.00)) <u>5,085.00</u>	5,085.00
g. 25,000 - < 50,000 bins/yr.	((6,507.00)) <u>6,800.00</u>	6,800.00
h. 50,000 - < 75,000 bins/yr.	((7,232.00)) <u>7,557.00</u>	7,557.00
i. 75,000 - < 100,000 bins/yr.	((8,410.00)) <u>8,788.00</u>	8,788.00
j. 100,000 - < 125,000 bins/yr.	((10,523.00)) <u>10,997.00</u>	10,997.00



INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
k. 125,000 - < 150,000 bins/yr.	((13,152.00)) <u>13,744.00</u>	13,744.00
l. 150,000 bins/yr. and greater	((15,781.00)) <u>16,491.00</u>	16,491.00
<b>Fuel and Chemical Storage</b>		
a. < 50,000 bbls	((1,878.00)) <u>1,963.00</u>	1,963.00
b. 50,000 - < 100,000 bbls	((3,758.00)) <u>3,927.00</u>	3,927.00
c. 100,000 - < 500,000 bbls	((9,393.00)) <u>9,816.00</u>	9,816.00
d. 500,000 bbls and greater	((18,790.00)) <u>19,636.00</u>	19,636.00
<b>Hazardous Waste Clean Up Sites</b>		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	((4,927.00)) <u>5,149.00</u>	5,149.00
2. NPDES Permit Issued pre 7/1/94	((4,926.00)) <u>5,148.00</u>	5,148.00
3. NPDES Permit Issued post 7/1/94	((9,855.00)) <u>10,298.00</u>	10,298.00
b. Non-LUST Sites		
1. 1 or 2 Contaminants of concern	((9,635.00)) <u>10,069.00</u>	10,069.00
2. > 2 Contaminants of concern	((19,270.00)) <u>20,137.00</u>	20,137.00
<b>Ink Formulation and Printing</b>		
a. Commercial Print Shops	((2,891.00)) <u>3,021.00</u>	3,021.00
b. Newspapers	((4,818.00)) <u>5,035.00</u>	5,035.00
c. Box Plants	((7,708.00)) <u>8,055.00</u>	8,055.00
d. Ink Formulation	((9,636.00)) <u>10,070.00</u>	10,070.00
<b>Inorganic Chemicals Manufacturing</b>		
a. Lime Products	((9,393.00)) <u>9,816.00</u>	9,816.00
b. Fertilizer	((11,307.00)) <u>11,816.00</u>	11,816.00
c. Peroxide	((15,028.00)) <u>15,704.00</u>	15,704.00
d. Alkaline Earth Salts	((18,790.00)) <u>19,636.00</u>	19,636.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
e. Metal Salts	((26,299.00)) <u>27,482.00</u>	27,482.00
f. Acid Manufacturing	((37,265.00)) <u>38,942.00</u>	38,942.00
g. Chlor-alkali	((75,151.00)) <u>78,533.00</u>	78,533.00
Iron and Steel		
a. Foundries	((19,707.00)) <u>21,768.00</u>	((20,807.00)) <u>22,950.00</u>
b. Mills	((39,447.00)) <u>43,573.00</u>	((41,649.00)) <u>45,939.00</u>
Metal Finishing		
a. < 1,000 gpd	((2,362.00)) <u>2,609.00</u>	((2,494.00)) <u>2,751.00</u>
b. 1,000 - < 10,000 gpd	((3,939.00)) <u>4,351.00</u>	((4,159.00)) <u>4,587.00</u>
c. 10,000 - < 50,000 gpd	((9,849.00)) <u>10,879.00</u>	((10,399.00)) <u>11,470.00</u>
d. 50,000 - < 100,000 gpd	((19,706.00)) <u>21,767.00</u>	((20,806.00)) <u>22,949.00</u>
e. 100,000 - < 500,000 gpd	((39,408.00)) <u>43,530.00</u>	((41,608.00)) <u>45,894.00</u>
f. 500,000 gpd and greater	((59,115.00)) <u>65,299.00</u>	((62,415.00)) <u>68,845.00</u>
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	((1,176.00)) <u>1,229.00</u>	1,229.00
b. 1,000 - < 10,000 gpd	((1,639.00)) <u>1,713.00</u>	1,713.00
c. 10,000 - < 50,000 gpd	((3,526.00)) <u>3,685.00</u>	3,685.00
d. 50,000 - < 100,000 gpd	((8,223.00)) <u>8,593.00</u>	8,593.00
e. 100,000 - < 500,000 gpd	((14,087.00)) <u>14,721.00</u>	14,721.00
f. 500,000 - < 1,000,000 gpd	((19,965.00)) <u>20,863.00</u>	20,863.00
g. 1,000,000 - < 2,500,000 gpd	((25,838.00)) <u>27,001.00</u>	27,001.00
h. 2,500,000 - < 5,000,000 gpd	((31,572.00)) <u>32,993.00</u>	32,993.00
i. 5,000,000 gpd and greater	((37,575.00)) <u>39,266.00</u>	39,266.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
<b>Noncontact Cooling Water With Additives - General Permit Coverage</b>		
a. < 1,000 gpd	<del>((824.00))</del> <u>861.00</u>	861.00
b. 1,000 - < 10,000 gpd	<del>((1,642.00))</del> <u>1,716.00</u>	1,716.00
c. 10,000 - < 50,000 gpd	<del>((2,468.00))</del> <u>2,579.00</u>	2,579.00
d. 50,000 - < 100,000 gpd	<del>((5,756.00))</del> <u>6,015.00</u>	6,015.00
e. 100,000 - < 500,000 gpd	<del>((9,863.00))</del> <u>10,307.00</u>	10,307.00
f. 500,000 - < 1,000,000 gpd	<del>((13,977.00))</del> <u>14,606.00</u>	14,606.00
g. 1,000,000 - < 2,500,000 gpd	<del>((18,085.00))</del> <u>18,899.00</u>	18,899.00
h. 2,500,000 - < 5,000,000 gpd	<del>((22,192.00))</del> <u>23,191.00</u>	23,191.00
i. 5,000,000 gpd and greater	<del>((26,300.00))</del> <u>27,484.00</u>	27,484.00
<b>Noncontact Cooling Water Without Additives - Individual Permit Coverage</b>		
a. < 1,000 gpd	<del>((942.00))</del> <u>984.00</u>	984.00
b. 1,000 - < 10,000 gpd	<del>((1,878.00))</del> <u>1,963.00</u>	1,963.00
c. 10,000 - < 50,000 gpd	<del>((2,821.00))</del> <u>2,948.00</u>	2,948.00
d. 50,000 - < 100,000 gpd	<del>((6,578.00))</del> <u>6,874.00</u>	6,874.00
e. 100,000 - < 500,000 gpd	<del>((11,276.00))</del> <u>11,783.00</u>	11,783.00
f. 500,000 - < 1,000,000 gpd	<del>((15,968.00))</del> <u>16,687.00</u>	16,687.00
g. 1,000,000 - < 2,500,000 gpd	<del>((20,585.00))</del> <u>21,511.00</u>	21,511.00
h. 2,500,000 - < 5,000,000 gpd	<del>((25,362.00))</del> <u>26,503.00</u>	26,503.00
i. 5,000,000 gpd and greater	<del>((30,061.00))</del> <u>31,414.00</u>	31,414.00
<b>Noncontact Cooling Water Without Additives - General Permit Coverage</b>		
a. < 1,000 gpd	<del>((658.00))</del> <u>688.00</u>	688.00
b. 1,000 - < 10,000 gpd	<del>((1,318.00))</del> <u>1,377.00</u>	1,377.00
c. 10,000 - < 50,000 gpd	<del>((1,975.00))</del> <u>2,064.00</u>	2,064.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
d. 50,000 - < 100,000 gpd	((4,604.00)) <u>4,811.00</u>	4,811.00
e. 100,000 - < 500,000 gpd	((7,891.00)) <u>8,246.00</u>	8,246.00
f. 500,000 - < 1,000,000 gpd	((11,180.00)) <u>11,683.00</u>	11,683.00
g. 1,000,000 - < 2,500,000 gpd	((14,466.00)) <u>15,117.00</u>	15,117.00
h. 2,500,000 - < 5,000,000 gpd	((17,755.00)) <u>18,554.00</u>	18,554.00
i. 5,000,000 gpd and greater	((21,040.00)) <u>21,987.00</u>	21,987.00
Nonferrous Metals Forming	((19,707.00)) <u>21,768.00</u>	((20,807.00)) <u>22,950.00</u>
Ore Mining		
a. Ore Mining	((3,940.00)) <u>4,352.00</u>	((4,160.00)) <u>4,588.00</u>
b. Ore mining with physical concentration processes	((7,880.00)) <u>8,704.00</u>	((8,320.00)) <u>9,177.00</u>
c. Ore mining with physical and chemical concentration processes	((31,529.00)) <u>34,827.00</u>	((33,289.00)) <u>36,718.00</u>
Organic Chemicals Manufacturing		
a. Fertilizer	((18,790.00)) <u>19,636.00</u>	19,636.00
b. Aliphatic	((37,575.00)) <u>39,266.00</u>	39,266.00
c. Aromatic	((56,365.00)) <u>58,901.00</u>	58,901.00
Petroleum Refining		
a. < 10,000 bbls/d	((37,575.00)) <u>39,266.00</u>	39,266.00
b. 10,000 - < 50,000 bbls/d	((74,500.00)) <u>77,853.00</u>	77,853.00
c. 50,000 bbls/d and greater	((150,311.00)) <u>157,075.00</u>	157,075.00
Photofinishers		
a. < 1,000 gpd	((1,502.00)) <u>1,570.00</u>	1,570.00
b. 1,000 gpd and greater	((3,758.00)) <u>3,927.00</u>	3,927.00
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	((7,583.00)) <u>7,924.00</u>	7,924.00
b. Hydroelectric	((7,583.00)) <u>7,924.00</u>	7,924.00

INDUSTRIAL FACILITY CATEGORIES	FY <del>((2018))</del> 2020 ANNUAL PERMIT FEE	FY <del>((2019))</del> 2021 ANNUAL PERMIT FEE & BEYOND
c. Nonfossil Fuel	<del>((11,274.00))</del> <u>11,781.00</u>	11,781.00
d. Fossil Fuel	<del>((30,061.00))</del> <u>31,414.00</u>	31,414.00
<b>Pulp, Paper and Paper Board</b>		
a. Fiber Recyclers/ <u>Nonwood Pulp Mills</u>	<del>((18,787.00))</del> <u>19,632.00</u>	19,632.00
b. Paper Mills	<del>((37,575.00))</del> <u>39,266.00</u>	39,266.00
c. Groundwood Pulp Mills		
1. < 300 tons per day	<del>((56,365.00))</del> <u>58,901.00</u>	58,901.00
2. > 300 tons per day	<del>((112,740.00))</del> <u>117,813.00</u>	117,813.00
d. Chemical Pulp Mills w/o Chlorine Bleaching	<del>((150,304.00))</del> <u>157,068.00</u>	157,068.00
e. Chemical Pulp Mills w/Chlorine Bleaching	<del>((169,088.00))</del> <u>176,697.00</u>	176,697.00
<b>Radioactive Effluents and Discharges (RED)</b>		
a. < 3 waste streams	<del>((36,350.00))</del> <u>37,986.00</u>	37,986.00
b. 3 - < 8 waste streams	<del>((63,124.00))</del> <u>65,965.00</u>	65,965.00
c. 8 waste streams and greater	<del>((103,969.00))</del> <u>108,648.00</u>	108,648.00
<b>RCRA Corrective Action Sites</b>	<del>((26,409.00))</del> <u>27,597.00</u>	27,597.00
<b>Sand and Gravel - <del>((General))</del> <u>Individual</u> Permit Coverage</b>		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	<del>((3,392.00))</del> <u>3,581.00</u>	3,581.00
2. Nonoperating site (fee per site)	<del>((139.00))</del> <u>147.00</u>	147.00
b. Asphalt Production		
1. 1 - < 50,000 tons/yr.	<del>((1,413.00))</del> <u>1,492.00</u>	1,492.00
2. 50,000 - < 300,000 tons/yr.	<del>((3,393.00))</del> <u>3,582.00</u>	3,582.00
3. 300,000 tons/yr. and greater	<del>((4,243.00))</del> <u>4,480.00</u>	4,480.00
4. Nonoperating Asphalt	<del>((139.00))</del> <u>147.00</u>	147.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
<b>c. Concrete Production</b>		
1. 1 - < 25,000 cu. yds/yr.	((1,413.00)) <u>1,492.00</u>	1,492.00
2. 25,000 - < 200,000 cu. yds/yr.	((3,393.00)) <u>3,582.00</u>	3,582.00
3. 200,000 cu. yds/yr. and greater	((4,243.00)) <u>4,480.00</u>	4,480.00
4. Nonoperating Concrete	((139.00)) <u>147.00</u>	147.00
<p>The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.</p>		
<b>d. Portable Operations</b>		
1. Rock Crushing	((3,392.00)) <u>3,581.00</u>	3,581.00
2. Asphalt	((3,392.00)) <u>3,581.00</u>	3,581.00
3. Concrete	((3,392.00)) <u>3,581.00</u>	3,581.00
4. <u>Nonoperating Site</u>	<u>147.00</u>	<u>147.00</u>
<b>Sand and Gravel - General Permit Coverage</b>		
<b>a. Mining Activities</b>		
1. Mining, screening, washing and/or crushing	((2,373.00)) <u>2,505.00</u>	2,505.00
2. Nonoperating site (fee per site)	((98.00)) <u>103.00</u>	103.00
<b>b. Asphalt Production</b>		
1. 0 - < 50,000 tons/yr.	((991.00)) <u>1,046.00</u>	1,046.00
2. 50,000 - < 300,000 tons/yr.	((2,374.00)) <u>2,507.00</u>	2,507.00
3. 300,000 tons/yr. and greater	((2,969.00)) <u>3,135.00</u>	3,135.00
4. Nonoperating Asphalt	((98.00)) <u>103.00</u>	103.00
<b>c. Concrete Production</b>		
1. 0 - < 25,000 cu. yds/yr.	((991.00)) <u>1,046.00</u>	1,046.00
2. 25,000 - < 200,000 cu. yds/yr.	((2,374.00)) <u>2,507.00</u>	2,507.00
3. 200,000 cu. yds/yr. and greater	((2,969.00)) <u>3,135.00</u>	3,135.00
4. Nonoperating Concrete	((98.00)) <u>103.00</u>	103.00

INDUSTRIAL FACILITY CATEGORIES	FY <del>((2018))</del> 2020 ANNUAL PERMIT FEE	FY <del>((2019))</del> 2021 ANNUAL PERMIT FEE & BEYOND
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	<del>((2,374.00))</del> <u>2,507.00</u>	2,507.00
2. Asphalt	<del>((2,374.00))</del> <u>2,507.00</u>	2,507.00
3. Concrete	<del>((2,374.00))</del> <u>2,507.00</u>	2,507.00
4. <u>Nonoperating</u>	<u>103.00</u>	<u>103.00</u>
Seafood Processing		
a. < 1,000 gpd	<del>((1,878.00))</del> <u>1,963.00</u>	1,963.00
b. 1,000 - < 10,000 gpd	<del>((4,788.00))</del> <u>5,003.00</u>	5,003.00
c. 10,000 - < 50,000 gpd	<del>((8,549.00))</del> <u>8,934.00</u>	8,934.00
d. 50,000 - < 100,000 gpd	<del>((13,432.00))</del> <u>14,036.00</u>	14,036.00
e. 100,000 gpd and greater	<del>((18,790.00))</del> <u>19,636.00</u>	19,636.00
Shipyards		
a. Per crane, travel lift, small boat lift	<del>((3,940.00))</del> <u>4,352.00</u>	<del>((4,160.00))</del> <u>4,588.00</u>
b. Per drydock under 250 ft in length	<del>((3,940.00))</del> <u>4,352.00</u>	<del>((4,160.00))</del> <u>4,588.00</u>
c. Per graving dock	<del>((3,940.00))</del> <u>4,352.00</u>	<del>((4,160.00))</del> <u>4,588.00</u>
d. Per marine way/ <u>ramp</u>	<del>((5,910.00))</del> <u>6,528.00</u>	<del>((6,240.00))</del> <u>6,882.00</u>
e. Per syncrolift	<del>((5,910.00))</del> <u>6,528.00</u>	<del>((6,240.00))</del> <u>6,882.00</u>
f. Per drydock 250 ft and over in length	<del>((7,880.00))</del> <u>8,704.00</u>	<del>((8,320.00))</del> <u>9,177.00</u>
g. In-water vessel maintenance	<del>((7,880.00))</del> <u>8,704.00</u>	<del>((8,320.00))</del> <u>9,177.00</u>
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstormwater)		
a. Nonputrescible	<del>((7,512.00))</del> <u>7,850.00</u>	7,850.00
b. < 50 acres	<del>((15,027.00))</del> <u>15,703.00</u>	15,703.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
c. 50 - < 100 acres	((30,061.00)) <u>31,414.00</u>	31,414.00
d. 100 - < 250 acres	((37,575.00)) <u>39,266.00</u>	39,266.00
e. 250 acres and greater	((56,365.00)) <u>58,901.00</u>	58,901.00
Textile Mills	((75,151.00)) <u>78,533.00</u>	78,533.00
Timber Products		
a. Log Storage	((3,758.00)) <u>3,927.00</u>	3,927.00
b. Veneer	((7,512.00)) <u>7,850.00</u>	7,850.00
c. Sawmills	((15,028.00)) <u>15,704.00</u>	15,704.00
d. Hardwood, Plywood	((26,299.00)) <u>27,482.00</u>	27,482.00
e. Wood Preserving	((36,082.00)) <u>37,706.00</u>	37,706.00
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	((124.00)) <u>130.00</u>	130.00
b. 1,000 - < 5,000 gpd	((251.00)) <u>262.00</u>	262.00
c. 5,000 - < 10,000 gpd	((495.00)) <u>517.00</u>	517.00
d. 10,000 - < 20,000 gpd	((997.00)) <u>1,042.00</u>	1,042.00
e. 20,000 and greater	((1,647.00)) <u>1,721.00</u>	1,721.00
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	((3,758.00)) <u>3,927.00</u>	3,927.00
b. 0.5 - < 1.0 acre	((7,512.00)) <u>7,850.00</u>	7,850.00
c. 1.0 acre and greater	((11,274.00)) <u>11,781.00</u>	11,781.00
Vessel Deconstruction	((17,343.00)) <u>19,157.00</u>	((18,311.00)) <u>20,197.00</u>
Water Plants - Individual Permit Coverage	((5,128.00)) <u>5,359.00</u>	5,359.00
Water Plants - General Permit Coverage	((3,590.00)) <u>3,752.00</u>	3,752.00
Wineries - Individual Permit Coverage		
(a. < 500 gpd	383.00	400.00



INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
b. <del>500 &lt; 750 gpd</del>	769.00	804.00
e. <del>750 &lt; 1,000 gpd</del>	1,536.00	1,605.00
d. <del>1,000 &lt; 2,500 gpd</del>	3,074.00	3,212.00
e. <del>2,500 &lt; 5,000 gpd</del>	4,905.00	5,126.00
f. <del>5,000 gpd and greater</del>	6,731.00	7,034.00))
a. < 24,999 gallons per year (gpy)	<u>423.00</u>	<u>423.00</u>
b. 25,000 - < 39,999 gpy	<u>621.00</u>	<u>621.00</u>
c. 40,000 - < 54,999 gpy	<u>960.00</u>	<u>960.00</u>
d. 55,000 - < 69,999 gpy	<u>1,297.00</u>	<u>1,297.00</u>
e. 70,000 - < 99,999 gpy	<u>1,636.00</u>	<u>1,636.00</u>
f. 100,000 - < 299,999 gpy	<u>2,370.00</u>	<u>2,370.00</u>
g. 300,000 - < 699,999 gpy	<u>7,111.00</u>	<u>7,111.00</u>
h. 700,000 - < 999,999 gpy	<u>16,594.00</u>	<u>16,594.00</u>
i. 1,000,000 - < 1,999,999 gpy	<u>23,762.00</u>	<u>23,762.00</u>
j. 2,000,000 gpy and greater	<u>47,470.00</u>	<u>47,470.00</u>
<u>Wineries - General Permit Coverage</u>		
a. < 24,999 gpy	<u>296.00</u>	<u>296.00</u>
b. 25,000 - < 39,999 gpy	<u>434.00</u>	<u>434.00</u>
c. 40,000 - < 54,999 gpy	<u>671.00</u>	<u>671.00</u>
d. 55,000 - < 69,999 gpy	<u>907.00</u>	<u>907.00</u>
e. 70,000 - < 99,999 gpy	<u>1,144.00</u>	<u>1,144.00</u>
f. 100,000 - < 299,999 gpy	<u>1,657.00</u>	<u>1,657.00</u>
g. 300,000 - < 699,999 gpy	<u>4,973.00</u>	<u>4,973.00</u>
h. 700,000 - < 999,999 gpy	<u>11,604.00</u>	<u>11,604.00</u>
i. 1,000,000 - < 1,999,999 gpy	<u>16,617.00</u>	<u>16,617.00</u>
j. 2,000,000 gpy and greater	<u>33,196.00</u>	<u>33,196.00</u>

(a) Facilities other than those in the sand and gravel, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Fruit packer ~~((and))~~, sand and gravel, and winery permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. ~~((When required, the department will send the information form to the permit holder.))~~ The permit holder shall ~~((complete and return the information form))~~ submit the information to the department by the required due date. Failure to provide this information ~~((will))~~ results in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for fruit packers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or per-

mit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste (~~clean-up~~) cleanup sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating sand and gravel operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode may be verified by the appropriate ecology staff. Once operations resume, the permit fee (~~will be returned~~) returns to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period (~~will be~~) are assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit (~~will be~~) are assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

	FY ((2019))	
	FY ((2018)) <u>2020</u> Annual	<u>2021</u> Annual Permit Fee & Beyond
Residential Equivalents (RE)	Annual Permit Fee	Permit Fee & Beyond
< 250,000	\$2.16	\$2.16
> 250,000	((1.89)) <u>2.07</u>	((1.98)) <u>2.16</u>

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and (~~government-owned~~) public-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or (~~government-owned~~) public-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or (~~government-owned~~) public-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

	FY ((2018))	FY ((2019))
	<u>2020</u> Annual Permit Fee	<u>2021</u> Annual Permit Fee & Beyond
Permitted Flows		
.1 MGD and Greater	\$((12,945.00)) <u>14,299.00</u>	\$((13,668.00)) <u>15,075.00</u>
.05 MGD to < .1 MGD	((5,179.00)) <u>5,721.00</u>	((5,468.00)) <u>6,032.00</u>
.0008 MGD to < .05 MGD	((2,590.00)) <u>2,861.00</u>	((2,735.00)) <u>3,016.00</u>
< .0008 MGD	((781.00)) <u>863.00</u>	((825.00)) <u>910.00</u>

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue

and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORMWATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

	<b>FY ((2018)) 2020</b>	<b>FY ((2019)) 2021</b>
	<b>Annual Permit</b>	<b>Annual Permit</b>
	<b>Fee</b>	<b>Fee &amp; Beyond</b>
a. Individual Construction or Industrial Stormwater Permits		
1. < 50 acres	\$((5,179.00)) <u>5,721.00</u>	\$((5,468.00)) <u>6,032.00</u>
2. 50 -< 100 acres	((10,350.00)) <u>11,433.00</u>	((10,928.00)) <u>12,054.00</u>
3. 100 -< 500 acres	((15,538.00)) <u>17,163.00</u>	((16,405.00)) <u>18,095.00</u>
4. 500 acres and greater	((20,714.00)) <u>22,880.00</u>	((21,870.00)) <u>24,122.00</u>
b. Facilities Covered Under the Industrial Stormwater General Permit		
1. Municipalities and state agencies	((1,696.00)) <u>1,874.00</u>	((1,791.00)) <u>1,976.00</u>
2. New permit holders without historical gross revenue information	((889.00)) <u>982.00</u>	((939.00)) <u>1,035.00</u>
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	((165.00)) <u>182.00</u>	((174.00)) <u>192.00</u>
\$100,000 -< \$1,000,000	((714.00)) <u>789.00</u>	((754.00)) <u>832.00</u>
\$1,000,000 -< \$2,500,000	((854.00)) <u>944.00</u>	((902.00)) <u>995.00</u>
\$2,500,000 -< \$5,000,000	((1,427.00)) <u>1,577.00</u>	((1,507.00)) <u>1,663.00</u>
\$5,000,000 -< \$10,000,000	((2,141.00)) <u>2,365.00</u>	((2,261.00)) <u>2,493.00</u>
\$10,000,000 and greater	((2,587.00)) <u>2,857.00</u>	((2,731.00)) <u>3,012.00</u>
<p>To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:</p> <p>(a) In the case of a corporation, by an authorized corporate officer;</p> <p>(b) In the case of a limited partnership, by an authorized general partner;</p> <p>(c) In the case of a general partnership, by an authorized partner; or</p> <p>(d) In the case of a sole proprietorship, by the proprietor.</p> <p>The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.</p>		
c. Construction Activities Covered Under the Construction Stormwater General Permit(s)		
1. Less than 5 acres disturbed area	\$((670.00)) <u>740.00</u>	\$((707.00)) <u>780.00</u>
2. 5 -< 7 acres of disturbed area	((1,089.00)) <u>1,203.00</u>	((1,150.00)) <u>1,268.00</u>

3.	7 -< 10 acres of disturbed area	((1,470.00))	((1,552.00))
		<u>1,624.00</u>	<u>1,712.00</u>
4.	10 -< 20 acres of disturbed area	((2,006.00))	((2,118.00))
		<u>2,216.00</u>	<u>2,336.00</u>
5.	20 acres and greater of disturbed area	((2,495.00))	((2,634.00))
		<u>2,756.00</u>	<u>2,906.00</u>

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal stormwater permit annual fee for the entities listed below (~~will be~~) is:

Name of Entity	FY <del>((2018))</del> 2020 Annual Permit Fee	FY <del>((2019))</del> 2021 Annual Permit Fee & Beyond
King County	<del>\$(58,987.00))</del> <u>65,157.00</u>	<del>\$(62,280.00))</del> <u>68,695.00</u>
Snohomish County	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Pierce County	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Tacoma, City of	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Seattle, City of	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Washington Department of Transportation	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Clark County	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>

(b) Municipal stormwater general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, (~~will be~~) are determined in the following manner: For fiscal year ~~((2018))~~ 2020, ecology will charge ~~\$(1.71))~~ 1.89 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.84))~~ .93 per housing unit inside the geographic area covered by the permit. For fiscal year ~~((2019))~~ 2021, ecology will charge ~~\$(1.81))~~ 1.99 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.89))~~ .98 per housing unit inside the geographic area covered by the permit. Fees will not exceed ~~\$(58,987.00))~~ 65,157.00 for fiscal year ~~((2018))~~ 2020 and ~~\$(62,280.00))~~ 68,695.00 for fiscal year ~~((2019))~~ 2021. The minimum annual fee will not be lower than ~~\$(2,452.00))~~ 2,709.00 for fiscal year ~~((2018 and \$2,589.00))~~ 2020 and \$2,856.00 for fiscal year ~~((2019))~~ 2021 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay

a fee totaling ~~\$(.84))~~ .93 per housing unit for fiscal year ~~((2018))~~ 2020. The fee amount for FY ~~((2019 will be \$.89))~~ 2021 is \$.98 per housing unit.

(c) Other entities required to have permit coverage under a municipal stormwater general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY <del>((2018))</del> 2020 Annual Permit Fee	FY <del>((2019))</del> 2021 Annual Permit Fee
Less than \$100,000	<del>\$(171.00))</del> <u>189.00</u>	<del>\$(181.00))</del> <u>199.00</u>
\$100,000 - < \$1,000,000	<del>((691.00))</del> <u>764.00</u>	<del>((730.00))</del> <u>805.00</u>
\$1,000,000 - < \$5,000,000	<del>((1,726.00))</del> <u>1,906.00</u>	<del>((1,822.00))</del> <u>2,009.00</u>
\$5,000,000 - < \$10,000,000	<del>((2,589.00))</del> <u>2,860.00</u>	<del>((2,734.00))</del> <u>3,015.00</u>
\$10,000,000 and greater	<del>((4,314.00))</del> <u>4,765.00</u>	<del>((4,555.00))</del> <u>5,024.00</u>

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal stormwater permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the

higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal stormwater general permit as determined in (c) of this subsection, the fiscal year ~~((2018))~~ 2020 annual fee for a permit written for a specific entity ~~((shall be \$12,270.00))~~ is \$13,554.00. For fiscal year ~~((2019))~~ 2021, the annual fee ~~((will be \$12,955.00))~~ is \$14,290.00.

(e) Ecology will assess a single permit fee for entities which apply only as copermitees or coapplicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the copermitees had applied separately.

AMENDATORY SECTION (Amending WSR 17-16-005, filed 7/20/17, effective 8/20/17)

**WAC 173-224-050 Permit fee computation and payments.** (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the fiscal year to which they apply. The department shall notify permit holders of fee charges by ~~((mailing billing statements. Permit fees must be received by the department))~~ sending an invoice to the permittee on record. The department must receive permit fee payments within forty-five days after the department ~~((mails))~~ sends a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation ~~((for individual permits. Computation of permit fees))~~ shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the permit issuance date ((of the permit)). In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon ~~((acceptance of the application by the department))~~ the date the department accepts the application. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the department terminates permit ((has been terminated by the department)) coverage. Permits terminated during the fiscal year will pay the annual fee assessment regardless of the permit termination date.

(3) Permit fees for sand and gravel general permit holders ~~((will be))~~ are assessed as in subsection (2) of this section and:

(a) Nonoperating sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production ~~((will be))~~ are assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees ~~((will be))~~ are based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, ~~((will be))~~ are based on the previous calendar year production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous calendar year. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit.

(4) Fees for fruit packer general permit holders ~~((will be))~~ are assessed as in subsection (2) of this section and ~~((will be))~~ are computed based on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(c). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee ~~((will be))~~ is determined based on the actual production during the first ~~((year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third))~~ year. Fee calculation for subsequent years will be based on the average production values of previous years.

(5) Facilities with construction and industrial stormwater general permit coverage will have their annual permit fees begin on the permit issuance date.

(6) Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

~~((6))~~ (7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction stormwater general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

~~((7))~~ (8) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

~~((8))~~ (9) The applicable permit fee shall be paid using ecology's online payment software or by check or money order payable to the "Department of Ecology" and mailed to the Water Quality Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.

~~((9))~~ (10) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

~~((10))~~ (11) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts ~~((will be))~~ are processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may be turned over for collection. In addition to the amount owed, the collection agent will add a surcharge totaling twenty percent of the delinquent amount owed. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending WSR 13-22-051, filed 11/1/13, effective 12/2/13)

**WAC 173-224-090 Permit fee reductions.** With the exception of facilities covered under the industrial stormwater general permit who are not eligible to apply for a fee reduction, any business required to pay a fee ~~((under an industrial or construction fee category))~~ may receive a reduction of its permit fee.

(1) Market research and development.

(a) To qualify for the fee reduction, the operation under permit must be:

(i) A research facility with the primary purpose of researching market viability for products and/or processes that reduce or eliminate wastewater pollutants or wastewater pollutant generating activity;

(ii) Covered under an individual permit issued within the past three fiscal years;

(iii) Assessed a fee under an established fee category, excluding facility not otherwise classified.

(b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application shall bear a certification of correctness and be signed:

(i) In the case of a corporation, by an authorized corporate officer;

(ii) In the case of a limited partnership, by an authorized general partner;

(iii) In the case of a general partnership, by an authorized partner;

(iv) In the case of a sole proprietorship, by the proprietor;  
or

(v) In the case of a municipality, state, or other public entity, by either a principal executive officer or a ranking elected official.

(c) The department may verify the information contained in the application and, if it determines that the permit holder

has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(d) The permit fee for market research and development determined to be eligible under (a) of this subsection shall be reduced to twenty-five percent of the assessed annual permit fee.

(e) A site can only be eligible for this reduction for three consecutive fiscal years.

(2) Small business fee reduction.

~~((1))~~ (a) To qualify for the fee reduction, a business must:

~~((a))~~ (i) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

~~((b))~~ (ii) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

~~((c))~~ (iii) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or stormwater discharge permit; and

~~((d))~~ (iv) Have an original annual fee assessment totaling five hundred dollars or greater.

~~((2))~~ (b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions ~~((of subsection (1)))~~ in (a) of this ~~((section have been))~~ subsection are met. The application shall bear a certification of correctness and be signed:

~~((a))~~ (i) In the case of a corporation, by an authorized corporate officer;

~~((b))~~ (ii) In the case of a limited partnership, by an authorized general partner;

~~((c))~~ (iii) In the case of a general partnership, by an authorized partner; or

~~((d))~~ (iv) In the case of a sole proprietorship, by the proprietor.

~~((3))~~ (c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

~~((4))~~ (d) The permit fee for small businesses determined to be eligible under ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection shall be reduced to fifty percent of the assessed annual permit fee.

Extreme hardship fee reduction. Any ~~((industrial or construction))~~ small business with annual gross revenue totaling one hundred thousand dollars or less ~~((of the))~~ from goods and services produced using the processes regulated by the waste discharge or stormwater discharge permit may apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below \$128.00.

AMENDATORY SECTION (Amending WSR 08-16-109, filed 8/5/08, effective 9/5/08)

**WAC 173-224-100 Administrative appeals to the department.** Any person aggrieved by a determination made under this chapter by the department may file a written appeal to the department no later than each fiscal year's first billing due date for payment of fees. Such appeal shall state the reasons that the aggrieved person believes that the department's determination is contrary to the requirements of RCW 90.48.-465, and specific actions ~~((that he/she is))~~ they are requesting that are consistent with those requirements. The department shall either issue a revised determination or a statement upholding the original determination. A revised determination shall be consistent with the requirements of RCW 90.48.465. Any person feeling aggrieved by the administrative appeals decision made by the department regarding their permit fee may obtain review thereof by filing an appeal with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903, within thirty days of receipt of the department's decision. In addition, a copy of the appeal must be served on the Department of Ecology, Attention: Water Quality Program Permit Fee Unit, P.O. Box 47600, Olympia, Washington 98504-7696, within thirty days of receipt. These procedures are consistent with the provisions of chapter 43.21B RCW and the rules and regulations adopted thereunder.

**WSR 19-14-048**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

[Filed June 27, 2019, 2:07 p.m., effective July 28, 2019]

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

Purpose: The agency is amending this rule to allow a limited exception to the requirement that an attorney representing an appellant in a hearing must file a notice of appearance. The exception applies to an attorney representing an appellant who was also the person that originally requested the appellant's hearing. The agency is also amending the list of people who may not represent an appellant in a hearing to include an employee of the department of children, youth, and families.

Citation of Rules Affected by this Order: Amending WAC 182-526-0155.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 19-11-074 on May 16, 2019.

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 1, Repealed 0.

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

Date Adopted: June 27, 2019.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-23-201, filed 11/22/17, effective 12/23/17)

**WAC 182-526-0155 Appellant's representation in the hearing.** (1) ~~((An))~~ Appellants may act as ~~((his or her))~~ their own representative or may choose to have someone represent ~~((him or her))~~ them including, but not limited to, a friend, relative, community advocate, attorney or paralegal.

(2) All parties, including the health care authority (HCA) and their representatives, must provide their name, address, and telephone number to the office of administrative hearings (OAH) and all other parties prior to the hearing.

(3) The administrative law judge (ALJ) may require an appellant's representative to file a written notice of appearance, limited notice of appearance, or other documentation authorizing the representative to appear on behalf of the appellant.

(4) In cases involving confidential information, the representative must file a legally sufficient signed written consent or release of information document with HCA or HCA's authorized agent.

(5) If an appellant is represented by an attorney admitted to practice law in Washington state, the attorney must file a notice of appearance or limited notice of appearance and a notice of withdrawal if the attorney stops representing the ~~((party))~~ appellant before the hearing process ends.

(6) HCA allows an exception to the requirement to file a notice of appearance in subsection (5) of this section when an appellant is represented by an attorney admitted to practice law in Washington state, and that attorney originally requested the appellant's hearing under WAC 182-526-0095. If the attorney stops representing the appellant before the hearing process ends, the requirement to file a notice of withdrawal still applies.

(7) The following restrictions apply to an appellant's representative:

(a) HCA and HCA's authorized agents do not pay for an appellant's representation.

(b) OAH does not pay for an appellant's representation.

(c) The following people may not act as an appellant's representative in a hearing under this chapter:

(i) An employee of HCA;

(ii) HCA's authorized agent;

(iii) An employee of the department of social and health services (DSHS);

(iv) An employee of the department of children, youth, and families (DCYF);

(v) An employee of OAH; or

((+)) (vi) Anyone under eighteen years of age.



**WSR 19-14-066**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed June 28, 2019, 11:38 a.m., effective July 29, 2019]

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

Purpose: The department of children, youth, and families is filing the permanent rules for extended foster care (EFC) WAC to implement chapter 34, Laws of 2018, that:

- Eliminated the requirement for dependent youth to have been in foster care on their eighteenth birthday to be eligible for EFC services. Now to be eligible for EFC a youth only needs to be dependent on their eighteenth birthday;
- Allows nonminor dependents to unenroll and reenroll in and foster youth to reenter the EFC program through a voluntary placement agreement an unlimited number of times between the ages of eighteen through twenty, if certain criteria are met; and
- Allows dependent youth who are eligible for EFC to enroll while incarcerated.

In addition, technical changes were made after the decodification of sections from chapter 388-25 WAC to chapter 110-90 WAC and repealed duplicative sections.

Citation of Rules Affected by this Order: Repealing WAC 110-90-0030, 110-90-0041 and 110-90-0042; and amending WAC 110-90-0020, 110-90-0040, 110-90-0110, and 110-90-0140.

Statutory Authority for Adoption: RCW 74.12.340, 74.04.050, 74.04.055, and 74.08.090; WSR 99-22-011, § 388-165-108.

Adopted under notice filed as WSR 19-01-023 on January 24 [December 10], 2019.

Changes other than editing from proposed to adopted version: Revisions were made in WAC 110-90-0040 Who is eligible for extended foster care?, to reflect a dependent youth in the custody of juvenile rehabilitation, department of corrections, county detention, or jail may enroll in the extended foster care program.

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

Number of Sections Adopted at 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 1, Repealed 3.

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: June 28, 2019.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0020 What is the purpose of the extended foster care program?** The extended foster care program provides an opportunity for young adults (~~(in foster care)~~) who are dependent at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth:

- (1) Completes a high school or a high school equivalency program;
- (2) Completes a secondary or post-secondary academic or vocational program;
- (3) Participates in a program or activity designed to promote employment or remove barriers to employment;
- (4) Is engaged in employment for eighty hours or more per month; or
- (5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0040 Who is eligible for extended foster care?** (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW (~~(placed in foster care as defined in WAC 388-25-0508 by CA,))~~) and:

- (a) Enrolled in school as described in WAC (~~(388-25-0512))~~ 110-90-0050;
- (b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC (~~(388-25-0514))~~ 110-90-0060;
- (c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC (~~(388-25-0515))~~ 110-90-0070;
- (d) Engaged in employment for eighty hours or more per month;
- (e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC (~~(388-25-0519))~~ 110-90-0100; or
- (f) Did not enroll in the extended foster care program; and
- (i) Had their dependency dismissed on their eighteenth birthday;
- (ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of (~~(nineteen))~~ twenty-one; and
- (iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.

(2) A dependent youth in the custody of juvenile rehabilitation, the department of corrections, county detention, or jail who otherwise meets the eligibility criteria in subsection (1)(a) through (f) of this section may enroll in the extended foster care program.

(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA (~~(one-time))~~) before the age of twenty-one. The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0110 How does a youth agree to participate in the extended foster care program?** (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age (~~nineteen~~) twenty-one; or

(b) Establishing a nonminor dependency before reaching age (~~nineteen~~) twenty-one if the department denied entry into the program.

(3) An eligible (~~nondependent~~) nonminor dependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one (~~as long as the youth has not previously entered into a VPA for extended foster care services~~).

(4) In order to continue receiving extended foster care services after entering into a VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a VPA.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care?** (~~(+)~~) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth:

(~~(a)~~) (1) Has not turned twenty-one; and

(~~(b)~~) (2) Meets one of the conditions for eligibility in WAC (~~388-25-0506~~) 110-90-0040 (1)(a) through (c)(~~and~~

~~(e) Has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.~~

(~~2) Youth may reenter the extended foster care program one time between the ages of eighteen to twenty-one~~)).

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-90-0030 What is extended foster care?

WAC 110-90-0041 When is a youth considered to be "in foster care"?

WAC 110-90-0042 When is a youth not "in foster care"?

#### WSR 19-14-073

#### PERMANENT RULES

#### BATES TECHNICAL COLLEGE

[Filed June 30, 2019, 6:00 a.m., effective July 31, 2019]

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

Purpose: Chapter 495A-121 WAC, Student rights and responsibilities, is amended to align with model student code of conduct.

Citation of Rules Affected by this Order: Amending chapter 495A-121 WAC.

Statutory Authority for Adoption: RCW 34.05.250, 28B.50.140(13).

Adopted under notice filed as WSR 19-08-099 on April 3, 2019.

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 19, Repealed 10.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 19, Repealed 10.

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: June 30, 2019.

Dr. Jean Hernandez  
Special Assistant to the President

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-010 Preamble.** Bates Technical College is a two-year public institution of higher education. The college is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Broadly stated, the purpose of the college is to provide opportunities for all who desire to pursue educational goals. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. To implement this objective, it is necessary to ensure that an environment is created wherein all students may progress in accordance with their capability and intensity of interest. The responsibility to create and maintain such an environment is shared by all members of the college community(~~(- Students, faculty, staff, and administration)~~).

AMENDATORY SECTION (Amending WSR 04-11-043, filed 5/13/04, effective 6/13/04)

**WAC 495A-121-011 Definitions.** The definitions set forth in this section shall apply throughout this chapter. The following words and phrases shall mean:

(1) "Assembly" (~~(shall)~~) means any activity engaged in by two or more persons, and the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any persons or group of persons.

(2) "Board of trustees" shall mean the five-member governance board appointed by the governor of the state of Washington for Bates Technical College, District No. 28.

(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the timeline runs until the next date on which the college is open for business.

(4) "College" shall mean Bates Technical College, ~~((which includes the main campus, extension centers, and off-campus classes and activities, including alternative learning methods distributed by web, tape, television or other alternative means))~~ District No. 28.

~~((4))~~ (5) "College community" ~~((shall mean all college employees designated as members of the administration by the board of trustees and students))~~ means students, employees, trustees, and volunteers.

~~((5))~~ (6) "College facilities" ~~((shall mean and include any or all computer systems/networks or extension/alternative sites or real property controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto.~~

~~(6))~~ and "college facility" mean and include any real and personal property owned, rented, leased, or operated by the college, all buildings and appurtenances attached thereto, and all parking lots and other grounds. College facilities extend to distance education classroom environments and agencies or institutions that have educational agreements with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all campuses of the college where located and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "College president" shall mean the chief executive officer of the college appointed by the board of trustees.

~~((7))~~ (10) "Complainant" is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct.

(11) "Conduct review officer" is the college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(12) "Consent" means a person gives knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the sexual activity. For consent to be valid there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact.

A person may be incapable of giving consent by reason of age, threat, intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A per-

son cannot consent if they are unable to understand what is happening, are disoriented, helpless, asleep, or unconscious for any reason including due to alcohol or other drugs.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity. An individual has engaged in nonconsensual sexual activity when the individual knows, or should know, that the other person is physically, emotionally, or mentally incapacitated.

(13) ~~"Controlled substance(s)" ((shall mean the definition of controlled substances as defined within RCW 69.50.101))~~ means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

~~((8))~~ ~~"Disciplinary action" shall mean and include oral warning, reprimand, probation, suspension, dismissal or any lesser sanction of any student by college officials.~~

(9) "Disciplinary official" shall mean the student/faculty disciplinary committee, the vice president of student services or designee, and the president.

(10) ~~"Drugs" shall mean a narcotic drug as defined in RCW 69.50.101 or a legend drug as defined in RCW 69.41.010.~~

~~(11))~~ (14) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(15) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. Disciplinary action does not include instructional decisions and actions that are under the authority of faculty members and instructional administrators, such as determination of academic credit and grading. These determinations and any review or appeal of these are outside the scope of this chapter.

(16) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student/faculty disciplinary committee. Appeals of all other disciplinary action that can be appealed is reviewed through brief adjudicative proceedings.

(17) "Employee" (~~(shall)~~) means any classified, faculty, administrator, exempt, student worker or volunteer person.

~~((12))~~ "Harassment" shall mean any malicious act, which causes harm to any person's physical or mental well being.

(13) ~~"Hate crimes" shall mean criminal acts in which victims are selected based on characteristics such as race, national origin, ethnicity, sex/gender, religion, sexual orientation or disability. Examples of behaviors that may constitute a hate crime include but are not limited to:~~

- ~~(a) Threatening phone calls.~~
- ~~(b) Hate mail.~~
- ~~(c) Physical assault.~~
- ~~(d) Threats of harm or violence.~~
- ~~(e) Arson.~~
- ~~(f) Vandalism.~~
- ~~(g) Cross burnings.~~
- ~~(h) Bombings and bomb threats.~~

(14) "Hazing" shall mean any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause bodily danger

or physical harm, or serious mental or emotional harm to any student or person attending a public or private institution of higher education or other postsecondary educational institution in this state.

(15)) (18) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(19) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email to the specified college official's email address.

Paper required to be filed is deemed filed upon actual receipt during office hours at the office of the specified college official.

(20) "Instructor(+)" and "faculty" ((shall mean professional staff members who are employed by the college in a temporary, full-time, tenured or probationary position as instructor, counselor, and/or librarian for the purpose of providing support services for students.

(16) "Liquor" shall mean the definition of liquor as defined in RCW 66.04.010.

(17) "Racial harassment" shall be defined as written, oral, graphic or physical conduct relating to an individual's race, color, or national origin that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of the individual to participate in or benefit from college's programs or activities. Examples of behaviors that constitute harassment based on race or national origin may include but are not limited to:

(a) Harassment of students because they are immigrants, speak another language, or have a foreign accent.

(b) Intimidation and implied or overt threats of physical violence motivated by race, color, or national origin.

(c) Physical acts of aggression or assault upon another, or damage to another's property that is motivated by the individual's race, color, or national origin.

(d) Depending on the circumstances and context, demeaning racial jokes, taunting, racial slurs, and derogatory racial "nicknames," innuendoes, or other negative or derogatory remarks of a racial nature or relating to national origin.

(e) Depending on the circumstances and context, graffiti and/or slogans or visual displays such as cartoons or posters depicting racial/ethnic slurs or other racially/ethnically derogatory sentiments.

(f) Criminal offenses directed at persons because of their race or national origin.

(18) "Sexual harassment" shall mean unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct directed at person because of his/her sex where:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic standing or employment; or

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

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or learning environment. Examples of behaviors that may constitute harassment include but are not limited to:

(i) Unwelcome verbal harassment of a sexual nature or abuse;

(ii) Unwelcome pressure for sexual activity;

(iii) Unwelcome sexually motivated or inappropriate patting, pinching, or physical contact;

(iv) Unwelcome sexual behavior or words, including demands for sexual favors accompanied by implied or overt threats concerning an individual's educational status;

(v) Unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;

(vi) The use of authority to emphasize the sexuality of a student in a manner that prevents or impairs the student's full enjoyment of educational benefits, climate or opportunities.

(19)) mean any employee of Bates Technical College, District No. 28 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

(21) "RCW" means Revised Code of Washington and can be accessed at <http://apps.leg.wa.gov/rcw/>.

(22) "Respondent" is the student against whom disciplinary action is initiated.

(23) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party is accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed.

(24) "Sexual misconduct" is the definition ascribed to this term in WAC 495A-121-041(14).

(25) "Student" ((shall mean and include any person who is enrolled at the college or is in the process of enrolling at the college)) includes all persons taking courses at or through the college whether on a full-time or part-time basis and whether such courses are credit courses, noncredit courses, online courses, continuing education, or contract courses. Persons meeting the following criteria are considered students:

(a) Who withdraw after allegedly violating the code;

(b) Who are not officially enrolled for a particular term but have a continuing relationship with the college; or

(c) Who have been notified of their acceptance for admission.

(26) "Student conduct officer" is a college administrator designated by the president to be responsible for investigating allegations of student misconduct and taking disciplinary action based on the prohibited conduct listed in WAC 495A-121-041. The president may reassign any of the student conduct officer's responsibilities under this chapter as deemed appropriate.

(27) "Student organization" means any number of students who meet the college's formal requirements to form a club or organization.

(28) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(29) "WAC" means the Washington Administrative Code and can be accessed at <http://app.leg.wa.gov/wac/>.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-012 Jurisdiction.** ((All rules in this chapter concerning student conduct and discipline apply to every student enrolled at the college whenever the student is engaged in or present at a college-related activity whether occurring on or off college facilities.)) **(1) The student conduct code shall apply to student conduct that occurs:**

(a) In or on college facilities;

(b) At or in connection with college-sponsored activities;

or

(c) Off campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including:

(a) Foreign or domestic travel;

(b) Activities funded or sponsored by the associated students;

(c) Athletic or recreational events;

(d) Training internships or cooperative education;

(e) Distance education or online education;

(f) Practicums or supervised work experiences;

(g) Apprenticeship sites; or

(h) Any other college-sanctioned activities.

(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree or certificate, including conduct that may occur before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending.

(4) The college has sole discretion on a case-by-case basis to determine whether this student conduct code applies to conduct that occurs off campus.

(5) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may continue with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-020 Student rights.** ((The college endorses the following rights for each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college.)) **As members of the academic community, students are encouraged to develop the capacity for critical judgment and**

to engage in an independent search for truth. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are assured to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are assured the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services that are subject to the limitations of RCW 28B.50-.090 (3)(b).

(c) The college protects students from academic evaluation that is arbitrary, prejudiced, or capricious. Students are responsible for meeting the standards of academic performance established by each instructor.

(d) Students have the right to a learning environment that is free of discrimination, inappropriate and disrespectful conduct, and all harassment including sexual harassment.

(2) Due process.

(a) The college assures the rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this student conduct code is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 04-11-043, filed 5/13/04, effective 6/13/04)

**WAC 495A-121-041 Prohibited conduct.** ((Disciplinary action may be taken for a violation of any provision of this student code or for a violation of other college rules and regulations, which may from time to time be properly enacted or for specific prohibited conduct including, but not limited to, the following:

(1) Smoking and use of tobacco products is prohibited in all classrooms, shop areas, the library and other areas designated by college officials.

(2) Using, possessing, consuming, or being under the influence of, or selling any liquor as defined in RCW 66.04.010, in violation of law or in a manner which disrupts a college activity.

(3) Using, possessing, selling or being under the influence of any narcotic drug or controlled substance as defined in RCW 69.50.101 in a college facility or while participating in a college-related program or activity.

(4) Engaging in lewd, indecent, or obscene behavior.

(5) Where the student presents an imminent danger to college property or to himself/herself or to other students or

persons in college facilities on or off campus, or to the educational process of the college.

(6) Interference by force or violence with, or intimidation by threat of force or violence, of another student, employee or visitor who is in the peaceful discharge or conduct of his/her duties or studies (RCW 28B.10.570 through 28B.10.572).

(7) Conducting or participating in an assembly, which violates the guidelines of assembly as defined and set forth in these provisions.

(8) Any forms of academic dishonesty, including cheating, falsification, plagiarism or facilitating, aiding, and abetting academic dishonesty.

(9) Forgery of or unauthorized alteration of or access to any college document, record, funds, or instrument of identification, including electronic hardware, software and records.

(10) The intentional making of false statements and/or filing of false charges against the college and/or a member of the college community.

(11) Theft from college premises and/or property; theft of property of a member of the college community on college premises; or possession of property stolen from college premises and/or a member of the college community while on college premises.

(12) Causing, or attempting to cause, physical damage to property owned, controlled or operated by the college or to property owned, controlled or operated by another person while said property is located on college facilities.

(13) Failure to comply with the direction of college employees acting in the legitimate performance of their duties.

(14) Refusal to provide positive identification and evidence of student enrollment to any college employee in the lawful discharge of said employee's duties.

(15) Unlawful possession, transportation or storage of any firearm(s), explosives, dangerous chemicals or other weapons, devices or substances which can be used to inflict bodily harm or to damage real or personal property.

(16) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(17) Sexual harassment as defined and set forth in these provisions, of another student or employee.

(18) Racial harassment as defined and set forth in these provisions of another student or employee.

(19) Any repeated intentional conduct directed at another student or employee that has the purpose or effect of creating a hostile, intimidating or disruptive learning or working environment.

(20) Hazing in any form as described in RCW 28B.10.900.

(21) Illegal or attempted illegal entry of college owned or college controlled property.

(22) Violation of any computer use policies in effect on campus as well as conduct that violates the college's property rights with respect to computing resources including, but not limited to:

(a) Unauthorized copying, including:

(i) Copying college owned or licensed software or data for personal or external use without prior approval;

(ii) Copying another computer user's software or data without permission of its owner, even if it is readily accessible by electronic means;

(iii) Knowingly accepting or using software or data which has been obtained by unauthorized means.

(b) Modifying or damaging, attempting to modify or damage computer equipment, software, databases, or communication lines without permission;

(c) Disrupting or attempting to disrupt computer operations;

(d) Invading the privacy of an individual by using electronic means to ascertain confidential information, even if an individual or department inadvertently allows access to such information;

(e) Abusing or harassing another computer user through electronic means;

(f) Using the college's computing facilities in the commission of a crime;

(g) Allowing another individual to use one's computer identity/account or using another individual's computer identity/account. This includes, but is not limited to: Logging on to the account, accessing programs, and reading or altering computer records. Computer time belongs to the college; the college is the only entity, through computing services, authorized to allocate time on the mainframe computers.

(h) Using computer services without authorization.

(i) Using the internet for purposes other than college-approved activities.

(23) Disruption. While students have the right to freedom of expression, including the right to dissent or protest, this expression cannot interfere with the rights of others or disrupt the processes of the college. The following conduct will not be permitted:

(a) Disruption of classes, laboratories, offices, services, meetings, or ceremonies;

(b) Obstruction of free movement of people or vehicles;

(c) Conduct which threatens harm, incites violence, or endangers the health and safety of any person;

(d) Threats of disruption, including bomb threats;

(e) Damaging, defacing or abusing college facilities, equipment, or property;

(f) Inciting others to engage in prohibited conduct.

(24) Violation of parking regulations.

(25) Other conduct. Any other conduct or action in which the college can demonstrate a clear and distinct interest, and, which substantially threatens the educational process or other legitimate function of the college or the health or safety of any member of the college is prohibited.)) The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct that includes, but is not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give, or obtain unauthorized assistance related to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own without proper attribution the ideas, writings, or work of

another person in completing an academic assignment. Plagiarism also may include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty that include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property.

(4) Assault, intimidation, and harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(5) Bullying is severe or pervasive physical or verbal (written or oral) abuse.

(6) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) Property violation. Damage to, theft, or misuse of real or personal property or money of:

(a) The college or state;

(b) Any student, college officer, or employee;

(c) Any other member of the college community or visitors; or

(d) Possession of such property or money after it has been stolen.

(8) Failure to comply with a directive from a college officer or employee who is acting in the legitimate performance of their duties or failure to properly identify oneself to said person when requested to do so.

(9) Weapons. The possession, transportation, and use of firearms or other dangerous weapons on campus apparently capable of producing bodily harm is prohibited on the college campus subject to the following exceptions:

(a) Certified law enforcement officers acting within the scope of their employment;

(b) Private contracted security with expressed prior written permission from the college to possess firearms or dangerous weapons while employed by the college or for a permitted or contracted event;

(c) Knives, tools, and other objects that are being used for a legitimate educational purpose as part of a college instructional program;

(d) A student with a valid concealed weapons permit may store a firearm in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(e) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written document.

(10) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or involvement in any pastime or amusement with said organization that causes or is likely to cause a student bodily danger, physical harm, and serious mental or emotional harm.

(11) Alcohol, drug, and tobacco violations.

(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana regardless of form including edibles. While state law permits the recreational use of marijuana, federal law prohibits the use on all college premises and in connection with all college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW or any other controlled substance under chapter 69.50 RCW except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. Use of tobacco, electronic cigarettes, smoking devices, and related products on or in any college facility is prohibited. Exceptions include in a designated smoking area or in a closed private vehicle when in compliance with applicable Washington state laws and college policies. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(12) Disorderly conduct. Conduct that:

(a) Disrupts campus operations or the educational, social, or housing programs; or

(b) Assisting or encouraging another person to engage in said disruptive behavior.

(13) Discriminatory conduct. Discriminatory conduct that harms or adversely affects any member of the college community or visitor. The misconduct includes, but is not limited to, race; color; national origin; sensory, mental, or

physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification as defined by the college's nondiscrimination statement.

(14) Sexual misconduct. The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment. The term sexual harassment means unwelcome conduct of a sexual nature that is sufficiently serious as to deny or limit, or that does deny or limit based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature or that creates an intimidating, hostile, or offensive environment for other college community members or visitors.

(b) Sexual intimidation. The term sexual intimidation means threatening or emotionally distressing conduct based on sex and including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, that is without consent or by force by a person upon another person or with any object. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object and also defined as oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, by a person upon another person or with an object that is without consent or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.

(v) Stalking is intentional and repeated harassment or following another person which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed even if the perpetrator lacks such intent.

(15) Harassment. Unwelcome and offensive verbal, non-verbal, or physical conduct that is directed at a person because of said person's protected status and that is sufficiently serious:

(a) As to deny or limit or that does deny or limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(b) That creates an intimidating, hostile, or offensive environment for other community college members or visitors.

Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See subsection (14)(a) of this section for the definition of sexual harassment.

(16) Retaliation. Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(17) Theft or misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of said computer time or resources to interfere with someone else's work;

(e) Use of said computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of said computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of said computer time and resources in violation of applicable copyright or other laws;

(h) Adding to or altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the student computing resources policy.

(18) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property or unauthorized entry onto or into college property.

(19) Safety violations. Safety violations include any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community or visitors.



including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation, or college policies or rules, including college traffic and parking rules.

(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing an educational goal or program.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-042 Performance dishonesty.** (1) Honest assessment of student performance is of crucial importance to all members of the college community. It is the responsibility of the college administration and teaching faculty to provide reasonable and prudent security measures designed to minimize opportunities for acts of performance dishonesty which occur at the college.

(2) ~~((This section))~~ The student code of conduct shall not be construed as preventing an instructor from taking immediate disciplinary action when the instructor is required to act upon such breach of performance dishonesty in order to preserve order and prevent disruptive conduct in the classroom. This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for performance dishonesty. Acts of performance dishonesty shall be cause for disciplinary action. Acts of dishonesty shall consist of, but not be limited to, the following:

(a) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the student fraudulently represents to the faculty member as ~~((the student's))~~ their own work, shall be deemed to have committed an act of performance dishonesty.

(b) Any student who aids or abets the accomplishment of an act of performance dishonesty as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-043 Classroom conduct.** ~~((Instructors have the authority to take whatever summary actions may be necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.~~

~~(1) Any student who, by any act of misconduct, substantially disrupts any college class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the faculty member's class shall be subject to disciplinary action.~~

~~(2) The instructor of each course offered by the college shall be authorized to take such steps as may be necessary to preserve order and to maintain the effective cooperation of the class in fulfilling the objectives of the course; provided that a student shall have the right to appeal such disciplinary~~

~~action to the vice president for student services.)~~ (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that day if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student that must be followed upon returning to the class or activity.

(4) The suspension of up to one day discussed in subsection (3) of this section shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer or designee shall be processed in accordance with this chapter.

(5) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

AMENDATORY SECTION (Amending WSR 04-11-043, filed 5/13/04, effective 6/13/04)

**WAC 495A-121-044 Disciplinary sanctions.** ~~((Sanctions for violations of college regulations or conduct may be imposed independent of any action taken by civil authorities. In the case of minors, misconduct may be referred to parents or legal guardians. More than one sanction may be recommended. Sanctions may include, but are not limited to:~~

~~(1) "Disciplinary warning" shall mean oral notice of violation of college rules and regulations.~~

~~(2) "Reprimand" shall mean formal action after censuring a student for violation of college rules or regulations for failure to satisfy the college's expectations regarding conduct. The disciplinary official makes reprimands in writing to the student. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other misconduct will result in one or more serious disciplinary actions described below.~~

~~(3) "Disciplinary probation" shall mean formal action placing conditions upon the student's continued attendance. Notice will be made in writing, specifying the period of probation and the conditions of the probation. Disciplinary probation warns the student that any further misconduct will automatically raise the question of dismissal from the college.~~

~~(4) "Restitution" shall mean compensation for loss, damage, or injury to the appropriate party in the form of service, money, or material replacement.~~

~~(5) "Discretionary sanctions" may include, but are not limited to, restricted computer systems/network access, work~~

assignments, service to college or community, mandatory class/workshop attendance or other discretionary assignments such as educational interventions intended as learning experiences.

(6) "Loss of privileges" shall mean loss of specific college privileges for a specified period of time. These may include, but are not limited to, computer/internet access, student activities or club participation.

(7) "Summary suspension" shall mean temporary dismissal from the college for a period of time during which an investigation and/or formal disciplinary procedures are pending. Summary suspension is predicated upon a reasonable belief that the student presents an imminent danger to college property, to other students, to employees of the college or is of significant disruption to the educational process.

(8) "Suspension" shall mean temporary dismissal from the college and termination of student status.

(9) "Expulsion" shall mean dismissal from the college and termination of student status.

(10) "No contact" shall mean restriction from entering specific college areas and/or all forms of contact with certain individual(s).) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree or certificate, disciplinary sanctions are not made a part of the student's academic record but are part of the student's disciplinary record. Violation of any term or condition of a disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(1) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action.

(2) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction may include, but is not limited to, a suspension or a dismissal from the college that shall take effect immediately. If the deferred sanction is a suspension in excess of ten days or a dismissal, the student shall have a right to appeal to the student/faulty disciplinary committee. Other deferred sanctions shall be subject to brief administrative proceedings as described in this chapter.

Any sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action was taken.

(5) Dismissal. The revocation of all rights and privileges of being a student at Bates Technical College and exclusion from all college campuses and college owned or controlled facilities without any possibility of returning. There is no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(6) Educational sanction. The college may require the student to complete an educational activity or experience directly related to the violation committed at the student's expense.

(7) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to the evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student remains suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(8) Not in good standing. If a student is deemed not in good standing with the college, the student is subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college;

(b) Ineligible to hold an elected or appointed office of the college; and

(c) Ineligible to represent the college to anyone outside the college community in any capacity including representing the college at any official function or any forms of intercollegiate competition or representation.

(9) Restitution or monetary fine. Reimbursement for damage to or misappropriation of property, for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine, or other compensation.

(10) Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(11) Revocation of admission, degree, or certificate. Admission to or the award of a degree or certificate from the college may be revoked for fraud, misrepresentation, violation of standards of conduct for students in obtaining the degree or certificate, or other serious violations committed by a student prior to graduation.

(12) Withholding degree or certificate. The college may withhold awarding a degree or certificate otherwise earned until the completion of the process set forth in this chapter and including the completion of all sanctions imposed.

(13) No trespass order. A student may be restricted from college property based on misconduct.

(14) No contact order. An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-061 (~~(Disciplinary process—Except summary suspension—)~~ **Initiation of disciplinary action.** ((1) ~~The vice president for student services or his/her designated representative will initiate disciplinary proceedings.~~**

~~(2) Any student accused of violating any provision of the rules of conduct shall be called for an initial meeting and advised as to the seriousness of the matter under consideration. The student will be informed of what provision(s) of the rules of conduct he/she is charged with violating, and what appears to be the range of penalties, if any, which might result from disciplinary proceedings.~~

~~(3) After considering the evidence in a case and interviewing the student or students involved, the vice president for student services, or in his/her absence, the designee, may take any of the following actions:~~

~~(a) Terminate the proceeding, exonerating the student or students.~~

~~(b) Dismiss the case after providing whatever counseling and advice may be appropriate.~~

~~(c) Impose disciplinary sanctions directly, subject to the student's right of appeal as described in this procedure. The student shall be notified in writing of the action taken except that disciplinary warnings may be given verbally.~~

~~(d) Refer the matter to the student/faculty disciplinary committee for appropriate action. The student shall be notified in writing that the matter has been referred to the committee. If a referral or an appeal is made to the student/faculty disciplinary committee, the committee shall hold a hearing, reach conclusions, and may impose sanctions.)~~ (1) All disciplinary actions are initiated by the student conduct officer. If the respondent has submitted an active complaint against the student conduct officer, the president shall, upon request, designate another person to fulfill any disciplinary responsibilities relative to the complaint.

(2) The student conduct officer initiates disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice briefly describes the factual allegations, the provision(s) of the student conduct code that the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specifies the time and location of the meeting. At the meeting the student conduct officer presents the allegations to the respondent, and the respondent is afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) Prior to taking disciplinary action in a case involving sexual misconduct, the student conduct officer will make a reasonable effort to contact the complainant(s):

(a) To discuss the results of the investigation; and

(b) If the allegations of sexual misconduct are found to have merit, to discuss the possible disciplinary sanctions or

conditions that may be imposed upon the respondent and are for the complainant's protection.

(4) Within ten days of the initial disciplinary meeting and after considering the evidence in the case including any facts or argument presented by the respondent, the student conduct officer will serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495A-121-044; or

(c) Refer the matter directly to the student/faculty disciplinary committee for disciplinary action as the committee deems appropriate. This referral is in writing, to the attention of the chair of the student/faculty disciplinary committee, and with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, both the respondent and the complainant will be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal the disciplinary decision. On the same date that a disciplinary decision is served on the respondent, the student conduct officer will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describe any disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice also informs the complainant of their appeal rights. If protective sanctions or conditions are imposed, the student conduct officer will make a reasonable effort to contact the complainant and ensure prompt notice of the protective disciplinary sanctions or conditions.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-062 Summary suspension procedures.** ~~((1) If the vice president for student services deems summary suspension appropriate, he/she shall give the student oral or written notice of the reasons for the summary suspension, duration of the summary suspension, and of any possible additional disciplinary or corrective action that may be taken. If oral notice is given, written notice shall follow within two working days. In addition, the vice president for student services shall set a date for informal hearing of the summary suspension as soon as practicable.~~

~~(2) The presiding officer for the informal hearing shall be an administrator designated by the president other than the administrator who initially imposed the summary suspension (normally, the vice president for student services) and will be accompanied by the president of the associated student government of Bates Technical College or designee. The student shall be given the opportunity to present written and/or oral~~

evidence. The issue before the presiding officer shall be whether reasonable cause exists to support and to continue the summary suspension.

(3) The presiding officer shall issue a written decision within two days of the informal hearing.

(4) The student may request a de novo review of the informal hearing decision before the student/faculty disciplinary committee. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

(5) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed three working days per episode. Any such summary action may be appealed to the vice president for student services for an informal hearing.)) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation or formal disciplinary procedure is pending.

(1) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the student conduct code and presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; or

(b) Poses an ongoing threat of substantial disruption of or interference with the operations of the college.

(2) Notice. Any respondent who has been summarily suspended will be served with oral or written notice of the summary suspension. If oral notice is given, a written notification will be served on the respondent within two days of the oral notice.

(3) The written notification is entitled "notice of summary suspension" and includes:

(a) The reasons for imposing the summary suspension including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the college premises or communicate with members of the college community and visitors. If the respondent has been trespassed from the college premises, a notice against trespass will be included that warns the respondent that the privilege to enter into or remain on college premises has been withdrawn and that the respondent is considered trespassing and subject to arrest for criminal trespass. The respondent may only enter the college premises for a scheduled meeting with the student conduct officer or conduct review officer or to attend a disciplinary hearing.

(4) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that summary suspension should be continued pending the conclusion of disciplinary proceedings and whether the summary suspension should be less restrictive in scope.

(b) The respondent is afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision that includes a brief explanation for any decision continuing or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(5) In cases involving allegations of sexual misconduct, the complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college also will provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-063 Appeals of disciplinary action.** ~~((Any disciplinary action other than warning or reprimand may be appealed. All appeals must be made in writing and addressed to the vice president for student services within ten working days of the college's giving notice of the disciplinary action.~~

~~(1) Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice president for student services, or in his/her absence, the designee.~~

~~(2) Disciplinary action by the appropriate disciplinary official may be appealed to, and shall be reviewed by, the student/faculty disciplinary committee.~~

~~(3) Disciplinary action by the student/faculty disciplinary committee may be appealed to, and shall be reviewed by, the college president or his/her designee.~~

~~(4) Disciplinary action by the president shall either indicate approval of the conclusions by sustaining the decision or shall give directions as to what other disciplinary action shall be taken by modifying the decision, or shall nullify previous sanctions imposed by reversing its decision. All appeals to the president shall be final.)) (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision is deemed final.~~

~~(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.~~

(3) The parties to an appeal are the respondent and the conduct review officer.

(4) A respondent who appeals a disciplinary action within the ten days of service or whose case is referred to the student/faculty disciplinary committee has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code will be delayed pending appeal, unless the respondent has been summarily suspended.

(7) The student/faculty disciplinary committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

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

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

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

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

(13) Brief adjudicative proceedings and the initial hearing shall be conducted by a conduct review officer. The conduct review officer will not participate in any case in which:

(a) The individual is involved as a complainant or witness;

(b) There is direct or personal interest, prejudice, or bias;  
or

(c) The conduct review officer has taken previous actions in an advisory capacity.

(14) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. Before taking action, the conduct review officer will conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(15) The conduct review officer will service an initial decision upon both the respondent and the student conduct officer within ten days of the completion of the informal hearing. The initial decision contains a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision is deemed the final decision.

(16) In cases involving allegations of sexual misconduct, the conduct review officer on the same date as the initial decision is served on the respondent will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection. The notice also will inform the complainant of their appeal rights.

(17) If upon review the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

(18) An initial decision from the brief adjudicative proceeding is subject to review by the president provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(19) The president will not participate in any case in which:

(a) They were involved as a complainant or witness;

(b) There is direct or personal interest, prejudice or bias;

or

(c) Previous actions have been taken in an advisory capacity.

(20) During the review, the president will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(21) The decision on review must be in writing, must include a brief statement of the reason for the decision, and must be served on the parties within twenty calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. If the president does not make a disposition of the matter within twenty calendar days after the request is submitted, a request for review is deemed denied.

(22) If upon review the president determines that the imposed sanctions are insufficient and that the respondent's

conduct may warrant imposition of a heightened disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

(23) In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent will serve written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice also will inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-064 Student/faculty disciplinary committee.** ~~((The student/faculty disciplinary committee, convened for that purpose, will hear, de novo, and make recommendations on all disciplinary cases referred to it by the appropriate authority or appeal to it by student(s). The committee will be composed of the following persons:~~

~~(1) A member appointed by the president of the college or his/her designee who shall serve as chair;~~

~~(2) Two members of the faculty, appointed by the president of the faculty association;~~

~~(3) Two representatives from the associated student government appointed by the student body president.~~

~~None of the above named persons shall sit on any case in which he/she has been a complainant or witness, in which he/she has a direct or personal interest, or in which he/she has acted previously in an advisory or official capacity. Decisions in this regard, including the selection of alternates, shall be made by the disciplinary committee as a whole.)) (1) Proceedings of the student/faculty disciplinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by chapter 10-08 WAC, Model rules of procedure. To the extent there is a conflict between this chapter and chapter 10-08 WAC, this chapter shall control. The student/faculty disciplinary committee will consist of five members:~~

~~(a) Two full-time students appointed by the student government.~~

~~(b) Two faculty members appointed by the president.~~

~~(c) One faculty member or administrator who is other than an administrator serving as a student conduct officer or conduct review officer and appointed as chair by the president for a term of up to two academic years.~~

~~(d) Members may be reappointed for subsequent terms. Any member may be replaced by the appointing authority for the remainder of the term for good cause shown.~~

~~(2) The faculty member or administrator appointed as the chair of the committee may take action on preliminary hearing matters prior to convening the committee. The chair will receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.~~

~~(3) Hearings may be heard by a hearing panel consisting of a quorum of three members of the committee provided one~~

~~faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.~~

~~(4) Members of the student/faculty disciplinary committee will not participate in any case in which:~~

~~(a) They are a party, complainant, or witness;~~

~~(b) They have direct or personal interest, prejudice, or bias; or~~

~~(c) They have acted previously in an advisory capacity.~~

~~(5) A party may petition for disqualification of a committee member.~~

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-065 Procedural guidelines of the student/faculty disciplinary committee.** ~~((The student has a right to a fair and impartial hearing before the committee on any charge of misconduct resulting in disciplinary action other than warning or reprimand.~~

~~(1) The committee chair shall establish general rules of procedures for conducting hearings. A majority of the committee shall set the time, place and available seating capacity for a hearing. All proceedings of the committee will be conducted with reasonable dispatch and terminated as soon as possible in fairness to all parties involved.~~

~~(2) The committee shall issue written notice to the student of the date, time, and place of the hearing, and the charges against the student consistent with RCW 34.05.434. This notice of hearing shall be provided no later than seven days prior to the date of the hearing. The notice may be amended at any time prior to the hearing, but if such amendment is prejudicial to the student's case, the hearing shall be rescheduled to a later date if so requested in writing by the student.~~

~~(3) The student may be represented by counsel and/or accompanied by an advisor of his/her choice. If the student elects to choose a duly licensed attorney admitted to practice in the state of Washington as counsel, notice thereof must be tendered by the student to the vice president for student services at least five working days prior to the hearing.~~

~~(4) The student or his/her representative shall be entitled to hear and examine the evidence against him/her and be informed of the identity of its sources; the student shall be entitled to present evidence in his/her own behalf and to question witnesses testifying against him/her as to factual matters. The committee shall request the administration to provide the student with a list of witnesses who will appear, and a description of any documentary or other physical evidence that will be presented at the hearing. The student shall have all authority which is possessed by the college to obtain information or to request the presence of witnesses or the production of other evidence relevant to the issues at the hearing.~~

~~(5) Only those matters presented at the hearing, in the presence of the student involved, will be considered in determining whether the student is guilty of the misconduct charged but the student's past record of conduct may be taken into account in formulating the committee's recommendation for disciplinary action.~~

(6) Hearings conducted by the committee may be held in closed session at the discretion of the committee, the only exception being when the student involved invites particular persons or requests an open hearing. If at any time during the conduct of the hearing, invited guests are disruptive of the proceedings, the chair of the committee may exclude such persons from the hearing room.

(7) Failure on the part of the student(s) to appear or cooperate in the proceedings may result in default in accordance with RCW 34.05.440. However, it may not preclude the committee from making its findings of fact, reaching conclusions and imposing sanctions. Failure of the student to cooperate may be taken into consideration by the committee in recommending penalties. The committee may decide: To uphold or modify sanctions in accordance with the process set forth in these provisions.

An adequate summary of the proceedings will be kept. At a minimum, such summary would include a tape recording of testimony. Such record will be available for inspection and copying in the office of student services during regular business hours. The student will be provided with a copy of the findings of fact and conclusions of the committee.) (1) Proceedings of the student/faculty disciplinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student/faculty disciplinary committee chair will serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences or to make prehearing decisions concerning the extent and form of the discovery, issuance of protective decisions, and similar procedural matters.

(4) A request filed at least five days before the hearing by a party or at the direction of the committee chair will result in the parties exchanging no later than the third day prior to the hearing the lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in the requested exchange may be cause for exclusion from the hearing of the witness or exhibit not disclosed, absent a showing of good cause for the failure.

(5) In advance of the hearing the committee chair may provide to the committee copies of:

(a) The conduct officer's notification of the imposition of discipline or referral to the committee; and

(b) The notice of appeal or response to the referral by the respondent. If doing so, the chair should remind the members that these pleadings are not evidence of any facts they may allege.

(6) Before the hearing the parties may agree to designate specific exhibits as admissible without objection and whether the committee chair may provide copies of these admissible exhibits to the committee members in advance of the hearing.

(7) Upon request the student conduct officer will provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) With the exception of procedural communications that are necessary to maintain an orderly process, communications between committee members and other hearing participants regarding issues in the proceeding are generally prohibited without notice and opportunity for all parties to participate, and improper "ex parte" communication will be placed on the record as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent or complainant may elect to be represented by an attorney at their own cost and will be deemed to have waived that right unless at least four days before the hearing written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee is ordinarily advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer also may be represented by a second assistant attorney general.

(10) Upon the failure of any party to attend or participate in a hearing the student/faculty disciplinary committee may:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(11) The hearing ordinarily is closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair will determine the extent to which the hearing is open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(12) The chair shall cause the hearing to be recorded by a method the chair selects in accordance with RCW 34.05.-449. The recording or a copy will be made available to the party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476 that also shall be available upon request for inspection and copying by the party. Other recording also shall be permitted in accordance with WAC 10-08-190.

(13) The chair shall preside at the hearing and decide procedural questions that arise during the hearing except as overridden by majority vote of the committee.

(14) The student conduct officer will present the case for imposing disciplinary sanctions unless represented by an assistant attorney general.

(15) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(16) In cases involving allegations of sexual misconduct no party can directly question or cross-examine one another. Attorneys for the parties also are prohibited from questioning the opposing party absent expressed permission from the committee chair. Subject to this exception, all cross-examination questions will be directed to the committee chair who in their discretion will pose the questions on the party's behalf.

(17) At the conclusion of the hearing the student/faculty disciplinary committee shall permit the parties to make closing argument, and the committee will determine the form to be used. The committee also may permit each party to propose findings, conclusions, or a proposed decision for its consideration.

(18) Within thirty calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision will include findings on all material issues of fact, conclusions on all material issues of law, and provisions of the student conduct code that were violated. Those findings based substantially on the credibility of evidence or the demeanor of witnesses will be identified.

(19) The committee's initial decision will include a determination on appropriate discipline, if deemed appropriate. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or condition(s), as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) or condition(s) imposed by the student conduct officer or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

(20) The committee's initial decision also will include a statement of the available procedures and time frames for seeking reconsideration or appeal.

(21) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair also will promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(22) In cases involving allegations of sexual misconduct, on the same date as the initial decision is served on the respondent the chair of the student/faculty disciplinary committee will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student/faculty disciplinary committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice also will inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-066 Appeal of the student/faculty disciplinary committee's decision.** ~~((1) The student will be advised of his/her right to present within seven working days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the case of a student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation may be sent to the parents or guardian of the student.~~

(2) If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college. The president or his/her designated representative, after reviewing the case, including the report of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall

be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The president shall then notify the official who initiated the proceedings, the student and the committee chair. The decision of the president is final.)) (1) A respondent who is aggrieved by the findings or conclusions issued by the student/faculty disciplinary committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right, and the initial decision is deemed final.

(2) The written notice of appeal must identify the specific findings of fact and conclusions of law in the initial decision that are challenged and must contain arguments why the appeal should be granted. The president's review is restricted to the hearing record made before the student/faculty disciplinary committee and normally limited to a review of those issues and arguments raised in the notice of appeal. If necessary to aid review, the president may ask for additional briefings from the parties on issues raised on appeal.

(3) The president will provide a written decision to the respondent and the student conduct officer within thirty calendar days after receipt of the notice of appeal. The president's decision is final and includes a notice of the rights to request reconsideration or judicial review.

(4) In cases involving allegations of sexual misconduct, on the same date that the final decision is served on the respondent the president will serve a written notice informing the complainant of the final decision. This notice informs the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president has discretion to suspend the disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) Per RCW 34.05.455 the president shall not engage in improper "ex parte" communication with the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-070 Reporting, recording, and maintaining records.** ~~((The office of the vice president for student services shall keep records of all disciplinary cases. Except in proceedings where the student is exonerated, all documentary or other physical evidence produced or considered in disciplinary proceedings, and all recorded testimony shall be preserved, insofar as possible, for not more than six years. No other records of proceedings wherein the student is exonerated, other than the fact of exonerated, shall be maintained in the student's file or other college repository after the date of the student's graduation or not more than six years.))~~

(1) The record in a brief adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476.



(2) The office of the senior administrator of student services will maintain records of student grievances and disciplinary proceedings for at least six years.

(3) The disciplinary record is confidential.

(4) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the senior administrator of student services. Personally identifiable student information is redacted to protect another student's privacy.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99, by making a written request to the senior administrator of student services.

(6) The college may inform the complainant of the outcome of the disciplinary proceeding involving a crime of violence or nonforcible sex offense as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(7) Only with prior written consent of the student may the college communicate a student's disciplinary record to a person or agency outside the college, except as required or permitted by law. Exceptions include, but are not limited to, the student's parent(s) or legal guardian(s) who may review these records if the student is:

(a) A minor or a dependent;

(b) Is a minor and disciplinary action involves the use or possession of alcohol or controlled substance; or

(c) In connection with a health or safety emergency regardless if the student is a dependent or a minor as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-091 Student complaints.** Complaints should be filed as soon as possible and no more than thirty days after the incident occurs.

(1) Step one. The student shall first ~~((determine if a formal written process is required by securing the student petition form. If not,))~~ schedule an ((information)) informal meeting with the instructor(+) or staff member ((should be scheduled by the student)) to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within ten working days from the time ~~((the event occurred or that the student knew, or reasonably should have known))~~ of the ~~((grievance))~~ informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the ~~((vice president for))~~ area administrator of student services. Within ten working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(2) Step two. If the grievance is not resolved at step one, the student may within ten working days of the receipt of the written response, appeal to the area ~~((director/associate director))~~ administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area ~~((director/associate director))~~ administrator.

(a) The ~~((director/associate director))~~ area administrator shall hear the grievance within ten working days after receipt of the grievance form and shall render a decision in writing within ten working days after such hearing.

(b) The student ~~((shall))~~ will be afforded an adequate and fair opportunity to fully present ~~((his/her))~~ their position and the relevant facts as they relate to the issues raised by the grievance.

(3) Step three. If the grievance is not resolved at step two, the student may within ten working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the ~~((vice president for))~~ senior administrator of student services.

(a) The ~~((vice president for))~~ senior administrator of student services shall hear the grievance within ten working days after receipt of the written appeal and shall render a decision in writing within ten working days after such hearing concludes.

(b) The student ~~((shall))~~ will be afforded an adequate and fair opportunity to fully present ~~((his/her))~~ their position and the relevant facts and issues to be addressed in the grievance.

(c) The decision of the ~~((vice president for))~~ senior administrator of student services shall be final and binding on all parties involved in the grievance.

(d) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-092 Records.** The ~~((vice president for))~~ senior administrator of student services ~~((shall))~~ will keep all written statements or transcripts associated with the complaint as part of the files. The files will be destroyed after six years from the initiation of the complaint.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-093 Time limits on filing a complaint.** The student must file a complaint within one quarter of the event, which caused the grievance to be filed. The ~~((vice president for))~~ senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness, or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the ~~((vice president))~~ senior administrator of student services will give the absent party reasonable opportunity to reply to the complaint before making a decision.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

**WAC 495A-121-094 Grievances excluded.** (1) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual ~~((harassment))~~ discrimination. The college has separate, specific procedures for such complaints. See the ~~((vice president for))~~ senior administrator of human resources for information on those specific procedures.

(2) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(3) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community and technical colleges or the board of trustees of Bates Technical College, District No. 28 (~~shall not be grievable matters~~) are excluded from being grieved.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495A-121-021	Academic freedom.
WAC 495A-121-022	Nondiscrimination.
WAC 495A-121-023	Due process.
WAC 495A-121-025	Right to assembly.
WAC 495A-121-026	Distribution of materials.
WAC 495A-121-027	Grievances.
WAC 495A-121-028	Commercial activities.
WAC 495A-121-029	Student responsibilities.
WAC 495A-121-045	Hazing sanctions.
WAC 495A-121-060	Discipline.

**WSR 19-14-076**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed July 1, 2019, 8:57 a.m., effective August 1, 2019]

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

Purpose: The department of children, youth, and families (DCYF) is amending rules in chapter 110-300 WAC, Foundational quality standards for early learning programs, as negotiated with parents and representatives of the regulated community and repealing chapters 110-300A and 110-300B WAC. Amendments allow the use of certain composted soil for gardens in outdoor early learning program space; allow flexibility for record storage when administrative functions are performed in a separate location from the licensed early learning program; clarify time periods for reporting critical incidents to the department; allow license applicants, when necessary, to submit septic system inspection reports from the last three years instead of six months and well water tests conducted in the last twelve instead of six months; eliminate the need to produce letters of recommendation when applying for licensure; eliminate the application of safe sleep requirements to toddlers; and make nonsubstantive edits that improve clarity. Chapters 110-300A and 110-300B WAC are repealed as new, negotiated standards for licensed early learning programs take effect in chapter 110-300 WAC. Finally, proposed rules contain nonsubstantive housekeeping

edits necessary after the decodification of Title 170 WAC and its recodification to Title 110 WAC.

Citation of Rules Affected by this Order: Citation of rules affected by this order: Repealing chapter 110-300A WAC (WAC 110-300A-0001, 110-300A-0010, 110-300A-0020, 110-300A-0030, 110-300A-0040, 110-300A-0050, 110-300A-0055, 110-300A-0070, 110-300A-0080, 110-300A-0090, 110-300A-0095, 110-300A-0100, 110-300A-0110, 110-300A-0120, 110-300A-0130, 110-300A-0140, 110-300A-1010, 110-300A-1020, 110-300A-1030, 110-300A-1040, 110-300A-1050, 110-300A-1060, 110-300A-1070, 110-300A-1080, 110-300A-1090, 110-300A-1100, 110-300A-1110, 110-300A-1120, 110-300A-2010, 110-300A-2020, 110-300A-2030, 110-300A-2040, 110-300A-2050, 110-300A-2060, 110-300A-2070, 110-300A-2080, 110-300A-2090, 110-300A-2100, 110-300A-2110, 110-300A-2120, 110-300A-2130, 110-300A-3010, 110-300A-3020, 110-300A-3030, 110-300A-3040, 110-300A-3050, 110-300A-3060, 110-300A-3070, 110-300A-3080, 110-300A-3090, 110-300A-3100, 110-300A-3110, 110-300A-3120, 110-300A-3130, 110-300A-3140, 110-300A-3150, 110-300A-3160, 110-300A-3170, 110-300A-3180, 110-300A-3190, 110-300A-3200, 110-300A-3210, 110-300A-3220, 110-300A-3230, 110-300A-4010, 110-300A-4020, 110-300A-4030, 110-300A-4040, 110-300A-4050, 110-300A-4060, 110-300A-4070, 110-300A-4080, 110-300A-4090, 110-300A-4100, 110-300A-4120, 110-300A-4130, 110-300A-4140, 110-300A-5010, 110-300A-5020, 110-300A-5030, 110-300A-5040, 110-300A-5050, 110-300A-5060, 110-300A-5080, 110-300A-5090, 110-300A-5100, 110-300A-5110, 110-300A-5120, 110-300A-5140, 110-300A-5150, 110-300A-5160, 110-300A-5170, 110-300A-6010, 110-300A-6020, 110-300A-6030, 110-300A-6040, 110-300A-6050, 110-300A-6060, 110-300A-7010, 110-300A-7020, 110-300A-7030, 110-300A-7032, 110-300A-7040, 110-300A-7050, 110-300A-7060, 110-300A-7070 and 110-300A-7080) and chapter 110-300B WAC (WAC 110-300B-0001, 110-300B-0005, 110-300B-0010, 110-300B-0050, 110-300B-1000, 110-300B-1025, 110-300B-1050, 110-300B-1075, 110-300B-1100, 110-300B-1125, 110-300B-1150, 110-300B-1175, 110-300B-1200, 110-300B-1225, 110-300B-1300, 110-300B-1325, 110-300B-1375, 110-300B-1410, 110-300B-1420, 110-300B-1430, 110-300B-1450, 110-300B-1475, 110-300B-1525, 110-300B-1600, 110-300B-1625, 110-300B-1650, 110-300B-1700, 110-300B-1725, 110-300B-1735, 110-300B-1750, 110-300B-1800, 110-300B-1825, 110-300B-1850, 110-300B-1875, 110-300B-1900, 110-300B-1910, 110-300B-1925, 110-300B-1950, 110-300B-1975, 110-300B-2025, 110-300B-2050, 110-300B-2075, 110-300B-2100, 110-300B-2125, 110-300B-2126, 110-300B-2150, 110-300B-2175, 110-300B-2200, 110-300B-2225, 110-300B-2250, 110-300B-2275, 110-300B-2300, 110-300B-2325, 110-300B-2350, 110-300B-2375, 110-300B-2400, 110-300B-2425, 110-300B-2450, 110-300B-2525, 110-300B-2550, 110-300B-2575, 110-300B-2600, 110-300B-2625, 110-300B-2650, 110-300B-2675, 110-300B-2700, 110-300B-2725, 110-300B-2775, 110-300B-2825, 110-300B-2850, 110-300B-2875, 110-300B-2900, 110-300B-2925, 110-300B-2950, 110-300B-2975, 110-300B-3000, 110-300B-3025,

110-300B-3050, 110-300B-3200, 110-300B-3210, 110-300B-3250, 110-300B-3275, 110-300B-3300, 110-300B-3315, 110-300B-3325, 110-300B-3375, 110-300B-3425, 110-300B-3450, 110-300B-3475, 110-300B-3525, 110-300B-3550, 110-300B-3575, 110-300B-3600, 110-300B-3625, 110-300B-3650, 110-300B-3675, 110-300B-3700, 110-300B-3725, 110-300B-3750, 110-300B-3775, 110-300B-3800, 110-300B-3825, 110-300B-3850, 110-300B-3875, 110-300B-3925, 110-300B-3950, 110-300B-4025, 110-300B-4050, 110-300B-4075, 110-300B-4100, 110-300B-4200, 110-300B-4225, 110-300B-4250, 110-300B-4275, 110-300B-4300, 110-300B-4325, 110-300B-4350, 110-300B-4360, 110-300B-4375, 110-300B-4400, 110-300B-4425, 110-300B-4450, 110-300B-4475, 110-300B-4500, 110-300B-4525, 110-300B-4550, 110-300B-4575, 110-300B-4600, 110-300B-4625, 110-300B-4650, 110-300B-4675, 110-300B-4700, 110-300B-4725, 110-300B-4750, 110-300B-4800, 110-300B-4850, 110-300B-4875, 110-300B-4900, 110-300B-4925, 110-300B-4950, 110-300B-5000, 110-300B-5025, 110-300B-5050, 110-300B-5075, 110-300B-5125, 110-300B-5150, 110-300B-5175, 110-300B-5200, 110-300B-5225, 110-300B-5250, 110-300B-5400, 110-300B-5450, 110-300B-5500, 110-300B-5550, 110-300B-5600, 110-300B-5625, 110-300B-5700, 110-300B-5750, 110-300B-5775, 110-300B-5810, 110-300B-5825, 110-300B-6000, 110-300B-6025, 110-300B-6050, 110-300B-6075, 110-300B-6100, 110-300B-6125, 110-300B-6150, 110-300B-6175, 110-300B-6200, 110-300B-6225, 110-300B-6250, 110-300B-6275, 110-300B-6400, 110-300B-6425, 110-300B-6450, 110-300B-6475, 110-300B-6500, 110-300B-6525, 110-300B-6550, 110-300B-6575, 110-300B-6600, 110-300B-6625, 110-300B-6650, 110-300B-6675, 110-300B-6700, 110-300B-6775, 110-300B-6800, 110-300B-6850, 110-300B-7000, 110-300B-7025, 110-300B-7075, 110-300B-7085, 110-300B-7125, 110-300B-7150, 110-300B-7175, 110-300B-7200, 110-300B-7225, 110-300B-7250, 110-300B-7275, 110-300B-7300, 110-300B-7350, 110-300B-7375, 110-300B-7500, 110-300B-7525, 110-300B-7550, 110-300B-7575, 110-300B-7600, 110-300B-7625, 110-300B-7650, 110-300B-7675, 110-300B-7680, 110-300B-7700, 110-300B-7725, 110-300B-7750, 110-300B-8000, 110-300B-8010, 110-300B-8025, 110-300B-8050, 110-300B-8060, 110-300B-8075, 110-300B-8100, 110-300B-8125, 110-300B-8150, 110-300B-8175, 110-300B-8225, 110-300B-8250, 110-300B-8275, 110-300B-8300, 110-300B-8325, 110-300B-8350, 110-300B-8375, and 110-300B-8400); and amending WAC 110-300-0148, 110-300-0210, 110-300-0235, 110-300-0275, 110-300-0291, 110-300-0400, 110-300-0410, and 110-300-0465.

Statutory Authority for Adoption: RCW 43.216.250 and 43.216.255.

Adopted under notice filed as WSR 19-08-036 on March 28, 2019. Changes other than editing from proposed to adopted version: Removed "toddler" from WAC 110-300-0291; and

WAC 110-300-0210 was revised to better clarify that a certificate of immunization status is required for each enrolled child and that the certificate of exemption form or state immunization information system record are required

only when applicable under the state department of health's rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 340.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 7, 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 7, Repealed 340.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 1, 2019.

Brenda Villarreal  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-300-0148 Gardens in outdoor early learning program space.** (1) A garden in an early learning program space must:

(a) Have safeguards in place to minimize risk of cross-contamination by animals;

(b) Use soil free from agricultural or industrial contaminants such as lead or arsenic if gardening directly in the ground;

(c) ~~((Use))~~ If gardening in raised beds use:

(i) New soil that is labeled ((as)) "organic" or "safe for children" and was obtained from a gardening supply store or other retail store ((if gardening in raised beds)); or

(ii) Composted soil made from material that is safe according to the Washington State University's extension master gardener composting guidelines; and

(d) Use water that comes from a private well approved by the local health jurisdiction or from a public water system. An early learning provider must make water for gardens inaccessible to children if the provider uses irrigation water.

(2) Garden beds must be made of materials that will not leach chemicals into the soil including, but not limited to, wood treated with chromated copper arsenate, creosote or pentachlorophenol, reclaimed railroad ties, or tires.

(3) Any herbicide or pesticide must be applied pursuant to the product manufacturer's directions. The product must not be applied ~~((during program hours))~~ while children are present. Children must not apply the product, or have access to the garden during the manufacturer's prescribed waiting period following application.

(4) Commonplace toxic plants or plants with poisonous leaves (for example: Tomato, potato, or rhubarb) may be grown in the garden. An early learning provider must actively supervise children who are able to access a garden where commonplace toxic plants or plants with poisonous leaves are growing.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

**WAC 110-300-0210 Immunizations and exempt children.** (1) Before attending an early learning program, a child must be vaccinated against or show proof of acquired immunity for the vaccine-preventable disease, pursuant to chapter 246-105 WAC (~~(as now and hereafter amended)~~). An early learning provider may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) Pursuant to WAC 246-105-050, an early learning provider must receive for each enrolled child:

(a) A current and complete department of health approved certificate of immunization status (CIS) (~~(or certificate of exemption (COE) or other department of health approved form, pursuant to WAC 246-105-050, as now and hereafter amended; or)~~) form;

(b) A department approved certificate of exemption (COE) form, if applicable; or

(c) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, an early learning provider must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) The parent or guardian provides a signed and dated statement detailing when the child's immunizations will be brought up to date.

(4) An early learning provider must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) An early learning provider may accept homeless or foster children into care without the records listed in this section if the child's family, (~~(case worker)~~) caseworker, or health care provider offers written proof that he or she is in the process of obtaining the child's immunization records.

(6) An early learning provider (~~(shall)~~) must exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within an early learning program, an early learning provider must notify the parents or guardians of children exempt from immunization for that disease and children without vaccination documents. A provider may exclude the child from the child care premises for the duration of the outbreak of that vaccine-preventable disease.

(8) An early learning provider may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-300-0235 Safe water sources.** (1) Hot and cold running water (~~(shall be supplied to)~~) must be directly plumbed to the early learning program premises.

(2) An early learning provider must use a Washington state certified water laboratory accredited by the department of ecology to (~~(analyze drinking water to)~~) test the program water supply for lead and copper (~~(within six months of the date this section becomes effective)~~).

(a) All fixtures used to obtain water for preparing food or infant formula, drinking, or cooking must be tested prior to licensing approval and at least once every six years(~~(-)~~);

(b) Testing must be done pursuant to current environmental protection agency standards(~~(-)~~); and

(c) A copy of the water testing results must be kept on the licensed premises or in the program's administrative office.

(3) If the test results are at or above the current EPA lead action level, an early learning provider must (~~(immediately)~~) do the following within twenty-four hours:

(a) Consult with department of health for technical assistance;

(b) Close the early learning program to prevent children from using or consuming water, or supply bottled or packaged water to meet the requirements of this chapter;

(~~(b)~~) Consult with the department of health for technical assistance;

(~~(c)~~) Contact and advise) (c) Notify all parents and guardians of enrolled children of the test results;

(d) Notify the department of the water test results and steps taken to protect the enrolled children(~~(-)~~);

(~~(d)~~) Notify all parents and guardians of the test results); and

(e) Notify the department once lead and copper levels are below the current EPA action level.

(~~(3)~~) (4) If an early learning program space receives water from a private well, the well must comply with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

(a) Well water must be tested at least once every twelve months for (~~(coliform)~~) E. coli bacteria and nitrates by a Washington state certified laboratory accredited by the department of ecology to analyze drinking water. To achieve desirable results the test must indicate:

(i) No presence of (~~(coliform)~~) E. coli bacteria; and

(ii) The presence of less than ten parts per million (ppm) for nitrates. If test results for nitrates are greater than five but less than ten ppm, the water must be retested within six months.

(b) If well water tests positive for (~~(coliform)~~) E. coli bacteria, or greater than ten ppm for nitrates, the (~~(early learning)~~) provider must:

(i) (~~(Immediately)~~) Stop using the well water in the child care premises within twenty-four hours; (~~(and)~~)

(ii) (~~(Immediately)~~) Inform the local health jurisdiction (~~(or)~~), the department of health, and the department of the positive test results(~~(-)~~); and

(~~(-)~~); and

~~((ii))~~ (iii) If directed to do so by the department, ~~((an early learning provider must))~~ discontinue child care operations until repairs are made to the water system and water tests indicate desirable results pursuant to ~~((b))~~ (a) of this subsection.

~~((c))~~ (c) If the department determines that child care operations may continue while an unsafe water system is being repaired or while the provider installs treatment, ~~((an early learning))~~ the provider must:

(i) Provide an alternate source of water, approved by the department; and

(ii) ~~((Repair the well or install treatment as required and))~~ Retest until ~~((the))~~ water ~~((meets the water quality standards pursuant to (b)))~~ tests indicate desirable results pursuant to (a) of this subsection.

~~((4))~~ (5) An early learning provider must ~~((immediately))~~ notify the department within four hours of when the water connection to an early learning program space is interrupted for more than one hour, or the water source becomes contaminated~~((s))~~.

(a) The department may require the early learning provider to temporarily close until the water connection is restored or the water source is no longer contaminated; or

(b) The early learning provider must obtain an alternative source of potable water such as bottled or packaged water. The amount of the alternative source of potable water must be sufficient to ensure compliance with the requirements of this chapter for safe drinking water, handwashing, sanitizing, dishwashing, and cooking.

**AMENDATORY SECTION** (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

**WAC 110-300-0275 Infant and toddler care.** (1) An early learning program may care for infants if the department inspects the program space and approves care for infants:

(a) Prior to issuing the program its license; or

(b) Prior to caring for infants if the program has not previously done so.

(2) An early learning provider working directly with infants must complete the department required infant safe sleep training pursuant to WAC 110-300-0106(8).

(3) An early learning provider must not use or allow the use of wheeled baby walkers.

(4) A center early learning provider licensed to care for any infant ~~((shall))~~ must employ or contract with a child care health consultant to provide health consultation to support the practices of staff working with infants and to support the needs of individual infants.

(5) A center early learning provider ~~((shall))~~ must enter into a department approved written agreement for services with a child care health consultant.

(a) The child care health consultant must be a currently licensed registered nurse who:

(i) Has worked in pediatrics or public health in the past five years or has taken or taught classes in pediatric nursing at the college level in the past five years;

(ii) Has experience with state licensing and public health requirements; and

(ii) Attests in writing to knowledge and experience sufficient to provide service consistent with the health consultant competencies described in the most current version of *Caring for Our Children*.

(b) The child care health consultant must be available, or make available a designee who meets the requirements of (a) of this subsection ~~((2)(a) of this section))~~, for consultation by phone as needed.

(6) A center early learning provider ~~((shall))~~ must ensure that the child care health consultant:

(a) Conducts at least one on-site visit monthly, if an infant is enrolled, during which the consultant:

(i) Observes and assesses staff knowledge of infant health, development, and safety and offers support through training, consultation, or referral;

(ii) Observes and assesses classroom health practices including, but not limited to, infection control including cleaning, sanitizing, and disinfecting, and provides technical assistance to correct any practices of concern;

(iii) Observes and assesses behavior, development, and health status of individual infants in care and makes recommendations to staff or parents or guardians including if further assessment is recommended, as requested or otherwise determined appropriate.

(b) Provides a dated, signed, written summary to the early learning provider for each visit that includes topics discussed with parents or staff, any areas of concern related to discussion, observation, assessment, or screening outcomes; and

(c) Reports each visit to the department.

(7) A center early learning provider must keep on-site a copy of the child care health consultant's written reports along with any notes, recommended follow up, and any actions taken to address concerns identified.

(8) If a center early learning provider is unable to independently employ or contract with a child care health consultant within thirty calendar days of enrolling an infant, the provider ~~((shall))~~ must contact the department for assistance. The department ~~((shall))~~ will assist the provider ~~((obtain))~~ in obtaining the services of a child care health consultant or may grant a waiver until the services can be secured.

**AMENDATORY SECTION** (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-300-0291 Infant ~~((and toddler))~~ safe sleep practices.** (1) An early learning provider must follow safe infant sleep practices when infants ~~((and toddlers))~~ are napping or sleeping by following the current standard of American Academy of Pediatrics concerning safe sleep practices including SIDS/SUIDS risk reduction, including:

(a) Actively supervising infants ~~((or toddlers))~~ by visibly checking ~~((often))~~ every fifteen minutes and being within sight and hearing range, including when an infant ~~((or toddler))~~ goes to sleep, is sleeping, or is waking up;

~~((Following the current standard of American Academy of Pediatrics concerning safe sleep practices including SIDS/SUIDS risk reduction;~~

~~((e)))~~ Placing an infant to sleep on his or her back or following the current standard of American Academy of Pediatrics

rics. If an infant turns over while sleeping, the provider must return the infant to his or her back until the infant is able to independently roll from back to front and front to back;

~~((d))~~ (c) Not using a sleep positioning device unless directed to do so by an infant's ~~((or toddler's))~~ health care provider. The directive must be in writing and kept in the infant's ~~((or toddler's))~~ file;

~~((e))~~ (d) Sufficiently lighting the room in which ~~((an))~~ the infant ~~((or toddler))~~ is sleeping to observe skin color;

~~((f))~~ (e) Monitoring breathing patterns of an infant ~~((or toddler))~~;

~~((g))~~ (f) Allowing infants ~~((and toddlers))~~ to follow their own sleep patterns;

~~((h))~~ (g) Not allowing ~~((loose))~~ blankets, stuffed toys, pillows, crib bumpers, and similar items inside ~~((an occupied))~~ a crib, bassinet, or other equipment ~~((where infants commonly sleep))~~ if occupied by a resting or sleeping infant;

~~((i))~~ (h) Not allowing a blanket or any other item to cover or drape over an occupied crib, bassinet, or other equipment where infants commonly sleep;

~~((j))~~ (i) Not allowing ~~((a blanket,))~~ bedding~~((,))~~ or clothing to cover any portion of an infant's ~~((or toddler's))~~ head or face while sleeping, and readjusting these items when necessary; and

~~((k))~~ (j) Preventing infants ~~((or toddlers))~~ from getting too warm while sleeping, which may be exhibited by indicators that include, but are not limited to, sweating; flushed, pale, or hot and dry skin, warm to the touch; a sudden rise in temperature; vomiting; refusing to drink, a depressed fontanelle; or irritability.

(2) An early learning provider who receives notice of a safe sleep violation must:

(a) Post the notice in the licensed space for two weeks or until the violation is corrected, whichever is longer, pursuant to WAC 110-300-0505; and

(b) Within five business days of receiving notice of the violation, provide all parents and guardians of enrolled children with:

(i) A letter describing the safe sleep violation; and

(ii) Written information on safe sleep practices for infants ~~((and toddlers))~~.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-300-0400 Application materials.** (1) After completing a department orientation an applicant must submit a complete license application packet, pursuant to chapter ~~((43-215))~~ 43.216 RCW. This requirement also applies to a change of ownership. A complete license application packet includes:

(a) Professional and background information about the applicant:

(i) A completed department application form for the type of license being applied for (center or family home);

(ii) A copy of the applicant's orientation certificate ~~((from an))~~ orientation ~~((completed))~~ must be taken within twelve months of ~~((the))~~ license application);

(iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;

(iv) Liability insurance, if applicable;

(v) Certificate of incorporation, partnership agreement, or similar business organization document, if applicable;

(vi) The license fee;

(vii) A copy of current government issued photo identification;

(viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;

(ix) Employer identification number (EIN) if applicant plans to hire staff; and

(x) Employment ~~((or))~~ and education verification. For example, diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.

(b) Information about the facility to be licensed:

(i) A floor plan, including use of proposed licensed and unlicensed space, with identified emergency exits and emergency exit pathways;

(ii) Certificate of occupancy, if applicable;

(iii) ~~((An on-site septic system inspection report within six months of the inspection))~~ Documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;

(iv) ~~((Well water coliform and nitrate testing results within six months of license application))~~ E. coli bacteria and nitrate testing results for well water that is no more than twelve months old, if applicable;

(v) A lead or arsenic evaluation agreement~~((, only))~~ for sites located in the Tacoma smelter plume (counties of King, Pierce, and Thurston); and

(vi) Lead and copper test results for drinking water~~((,))~~;

(c) Program days and hours of operation, including closure dates and holiday observances; and

(d) Information about early learning program staff:

(i) List of applicant~~((, staff persons, volunteers,))~~ and household members, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter ~~((170-06))~~ 110-06 WAC; and

(ii) Resume for applicant, center director, assistant director, program supervisor, and family home lead teacher, if applicable~~((, and~~

~~((Three letters of professional reference for applicant, director, assistant director, program supervisor, and family home lead teacher))~~).

(2) An applicant must include the following policy documents with the application, which will be reviewed by the department and returned to the applicant:

(a) Parent and program policies;

(b) Staff policies;

(c) An emergency preparedness plan; and

(d) Health policies~~((, and~~

~~((A plan to prevent exposure to blood and body fluids))~~).

(3) An applicant must submit the completed application packet at least ninety calendar days prior to the planned opening of the early learning program. The department will inspect the early learning program space and approve all application submissions required in this chapter prior to issuing a license:

(a) The ninety calendar days begins when the department receives a complete application packet.

(b) Incomplete application packets will be returned to the applicant for completion.

(c) An applicant who is unable to successfully complete the application and licensing process within ninety days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within ninety days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.

(d) An applicant who is unable to meet the application requirements and has not withdrawn his or her application will be denied a license, pursuant to RCW ~~((43.215.300))~~ 43.216.325.

**AMENDATORY SECTION** (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-300-0410 License and program location.**

(1) An applicant for a license under this chapter must be at least eighteen years old.

(2) A licensee refers to the individual or organization:

(a) Whose name appears on a license issued by the department;

(b) Responsible for complying with the standards in this chapter, chapter ~~((43.215))~~ 43.216 RCW ~~((including, but not limited to, liability insurance requirements pursuant to RCW 43.215.535)),~~ chapter ~~((170-06))~~ 110-06 WAC, ~~((DEL background check rules;))~~ and other applicable laws ~~((or))~~ and rules; ~~((and))~~

(c) Responsible for training early learning program staff on the foundational quality standards in this chapter~~((-~~

~~3)) An early learning provider must comply with and implement all requirements in this chapter unless another code or ordinance is more restrictive (for example: A local municipal, building, or health authority code).~~

~~(4) An early learning provider must have the character, suitability, and competence pursuant to chapter 170-06 WAC to meet the needs of children in care.~~

~~(5) Early learning program space must be located:~~

~~(a) On a site free from environmental hazards;~~

~~(b) In an area where nonemergency services and utilities can serve the early learning program space; and~~

~~(c) In an area served by emergency fire, medical, and police during the hours the early learning provider provides care to children.~~

~~(6) An early learning provider must prevent child exposure to the following within and around the licensed premises:~~

~~(a) Lead based paint;~~

~~(b) Plumbing and fixtures containing lead or lead solders;~~

~~(c) Asbestos;~~

~~(d) Arsenic, lead, or copper in the soil or drinking water;~~

~~(e) Toxic mold; and~~

~~(f) Other identified toxins or hazards.~~

~~(7) An early learning provider must place address numbers on the outside of the house or building containing the early learning program space, and the numbers must be legi-~~

~~ble and plainly visible from the street or road serving the premises.~~

~~(8)); and~~

~~(d) Who resides on the early learning program premises (family home child care only), pursuant to RCW 43.216.010.~~

~~(3) Early learning program space must be located:~~

~~(a) On a site free from known environmental hazards;~~

~~(b) In an area where nonemergency services and utilities can serve the early learning program space; and~~

~~(c) In an area served by emergency fire, medical, and police during the hours the early learning provider provides care to children.~~

~~(4) An early learning provider must prevent enrolled children from being exposed to the following known hazards within and around the licensed premises:~~

~~(a) Lead based paint;~~

~~(b) Plumbing and fixtures containing lead or lead solders;~~

~~(c) Asbestos;~~

~~(d) Arsenic, lead, or copper in the soil or drinking water;~~

~~(e) Toxic mold; and~~

~~(f) Other identified toxins or hazards.~~

~~(5) An early learning provider must place address numbers or signage on the outside of the house or building that contains the early learning program space. The numbers or signage must be legible and plainly visible from the street or road serving the premises.~~

~~(6) A license applicant planning to open an early learning program in the designated Tacoma smelter plume (counties of King, Pierce, and Thurston) must contact the state department of ecology (DOE) and complete and sign an access agreement with DOE to evaluate the applicant's property for possible arsenic and lead soil contamination.~~

**AMENDATORY SECTION** (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-300-0465 Retaining facility and program records.** (1) An early learning provider must keep ~~((all))~~ the records required in this chapter for a minimum of ~~((five))~~ three years unless otherwise indicated.

(2) ~~((All records from the previous twelve months must be kept in the licensed space and be immediately available for the department or other state agency's review. Immediately accessible records include:~~

~~(a) Child records;~~

~~(b) Staff records; and~~

~~(c) Attendance records.~~

~~(3)) Attendance records must be kept for a minimum of five years.~~

~~(3) Facility and program records from the previous twelve months must be easily accessible and kept on-site or in the program's administrative office for department or other state agency's review.~~

~~(4) Records older than twelve months must be provided within two weeks of a written request by the department.~~

~~((4))~~ (5) An early learning provider must keep ~~((other required and applicable))~~ the following records available for department review ~~((according to each record's specific retention schedule. These records include:~~

~~(a) A nondiscrimination policy;~~  
~~(b) Strengthening Families Program Assessment or a department-approved equivalent;~~  
~~(c));~~  
~~(a) The parent or guardian handbook;~~  
~~(b) Furniture, sleep, and play equipment forms and specifications;~~  
~~((d)) (c) Chromated copper arsenate test results, if applicable;~~  
~~((e)) (d) Annual fire inspection by qualified fire professional, if applicable;~~  
~~((f)) (e) Annual inspection of chimney, wood stove, and fireplace, if applicable;~~  
~~((g)) (f) Monthly inspection to identify fire hazards and elimination of such hazards;~~  
~~((h)) (g) Monthly testing of smoke and carbon monoxide detectors;~~  
~~((i)) (h) Monthly fire extinguisher inspection and annual maintenance;~~  
~~((j) Menus (six months) per CACFP;~~  
~~((k)) (i) Food temperature logs ((per CACFP)) pursuant to CACFP, if applicable;~~  
~~((l)) (j) Child incident and illness logs;~~  
~~((m) Medication administration logs;~~  
~~((n)) (k) Vaccination records for pets or animals housed at the early learning provider program;~~  
~~((o) Private well and septic systems inspection and testing results;~~  
~~((p)) (l) Lead and copper testing results;~~  
~~((q) Center or family home cleaning schedule;~~  
~~(r) Alternative cleaning, sanitizing, and disinfecting products approval from department health specialist;~~  
~~((s)) (m) Private well and septic systems inspection and testing results, if applicable;~~  
~~(n) Cleaning log for large area rugs or carpets;~~  
~~((t)) (o) Pesticide use (seven years);~~  
~~((u)) (p) Car insurance policy, if applicable;~~  
~~(q) Monthly site visit from ((nurse)) child care health consultant, if applicable;~~  
~~((v)) (r) Tacoma smelter inspection results;~~  
~~((w) Restraint and expulsion policy;~~  
~~(x) Daily schedule;~~  
~~((y)) (s) Curriculum planning ((time)) schedule;~~  
~~((z) Parent or guardian handbook;~~  
~~((aa)) (t) Strengthening families program self-assessment or an equivalent assessment;~~  
~~(u) Documents from ((any)) department visits (inspections, monitoring, compliance agreements, and safety plans); and~~  
~~((bb)) (v) Waivers or variances from department rules, if applicable;~~  
~~(cc) Written emergency preparedness plan and drills;~~  
~~(dd) Transportation policy;~~  
~~(ee) Car insurance policy;~~  
~~(ff) Termination of services policy;~~  
~~(gg) Continuity of care policy; and~~  
~~(hh) Health policy)).~~

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 110-300A-0001 What gives the authority to the department to license child care and charge licensing fees?  
WAC 110-300A-0010 What definitions under this chapter apply to licensed child care providers?  
WAC 110-300A-0020 Who needs to become licensed?  
WAC 110-300A-0030 Eligibility to receive state child care subsidies.  
WAC 110-300A-0040 Do I have to follow any other regulations or have any other inspections?  
WAC 110-300A-0050 Can I get a waiver (exception) to the minimum licensing requirements or to licensing fees?  
WAC 110-300A-0055 Can I get a dual license?  
WAC 110-300A-0070 What personal characteristics do my volunteers, all staff and I need to provide care to children?  
WAC 110-300A-0080 How is my licensed capacity determined?  
WAC 110-300A-0090 Initial and nonexpiring full licenses—Licensing fees.  
WAC 110-300A-0095 Nonexpiring full license.  
WAC 110-300A-0100 When can my license application be denied and when can my license be suspended or revoked?  
WAC 110-300A-0110 Civil fines.  
WAC 110-300A-0120 How much can I be fined?  
WAC 110-300A-0130 When can an individual be fined for operating an unlicensed program?  
WAC 110-300A-0140 Probationary licenses.  
WAC 110-300A-1010 Who can be the director of a child care center?  
WAC 110-300A-1020 What if the director does not meet the minimum qualifications?  
WAC 110-300A-1030 Who can be a lead teacher in a child care center?  
WAC 110-300A-1040 Who can be an assistant or aide in a child care center?  
WAC 110-300A-1050 Who can be a volunteer in a child care center?  
WAC 110-300A-1060 What initial and ongoing state training and registry system (STARS) training is required for child care center staff?



- WAC 110-300A-1070 What continuing state training and registry system (STARS) training is required for child care center staff?
- WAC 110-300A-1080 What topics must my new staff orientation include?
- WAC 110-300A-1090 What kind of meetings or ongoing training must I provide my staff?
- WAC 110-300A-1100 What are the requirements regarding first aid and cardiopulmonary resuscitation (CPR) training?
- WAC 110-300A-1110 Who must have human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS) and bloodborne pathogen training?
- WAC 110-300A-1120 What are the tuberculosis (TB) testing requirements for the staff?
- WAC 110-300A-2010 What types of play materials, equipment and activities must I provide for the children?
- WAC 110-300A-2020 How long can a child be at the center?
- WAC 110-300A-2030 How should staff interact with children?
- WAC 110-300A-2040 What behavior management and guidance practices must I have in place?
- WAC 110-300A-2050 Must we provide rest periods?
- WAC 110-300A-2060 What are the requirements for evening and nighttime care?
- WAC 110-300A-2070 What do I need to transport the children on offsite trips?
- WAC 110-300A-2080 What must I communicate to parents?
- WAC 110-300A-2090 What are the required staff to child ratios and maximum group sizes for my center?
- WAC 110-300A-2100 What are the exceptions to group sizes and staff to child ratios?
- WAC 110-300A-2110 Are children allowed in the kitchen when they are doing supervised activities?
- WAC 110-300A-2120 Are there special program requirements for infants and toddlers?
- WAC 110-300A-2130 Do I need an outdoor play area?
- WAC 110-300A-3010 What kind of health policies and procedures must I have?
- WAC 110-300A-3020 How often must staff wash their hands?
- WAC 110-300A-3030 When is a child or staff member too ill to be at child care?
- WAC 110-300A-3040 How often must children wash their hands?
- WAC 110-300A-3050 Am I required to give medications to the children in my care?
- WAC 110-300A-3060 Who can provide consent for me to give medication to the children in my care?
- WAC 110-300A-3070 How must I store medications?
- WAC 110-300A-3080 Can I use bulk medications (use one container for all the children such as with diaper ointments)?
- WAC 110-300A-3090 How do I handle left over medication?
- WAC 110-300A-3100 When can children take their own medication?
- WAC 110-300A-3110 Do I need special equipment to give medication?
- WAC 110-300A-3120 What documentation is required when giving children medication?
- WAC 110-300A-3130 Can anyone else give medication to children in my care?
- WAC 110-300A-3140 What kind of milk can I serve?
- WAC 110-300A-3150 How many meals and snacks must I serve?
- WAC 110-300A-3160 What kind of food and menus must I have?
- WAC 110-300A-3170 What are the food service standards I am required to meet?
- WAC 110-300A-3180 What are approved food sources?
- WAC 110-300A-3190 How can I be sure that the food I serve is safe?
- WAC 110-300A-3200 How do I safely store food?
- WAC 110-300A-3210 How do I safely thaw foods?
- WAC 110-300A-3220 What type of kitchen material and equipment is required?
- WAC 110-300A-3230 What type of eating and drinking equipment must I provide?
- WAC 110-300A-4010 At what age can I accept infants into care?
- WAC 110-300A-4020 How do I meet the nutritional needs of the infants in my care?
- WAC 110-300A-4030 What is a safe way to prepare bottles?
- WAC 110-300A-4040 What is a safe way to store infant formula and food?
- WAC 110-300A-4050 What is a safe way to store breast milk?

- WAC 110-300A-4060 What is a correct way to clean bottles and nipples?
- WAC 110-300A-4070 Are there specific rules for feeding infants and toddlers?
- WAC 110-300A-4080 When should I begin toilet training a child?
- WAC 110-300A-4090 Can I use potty-chairs for toilet training?
- WAC 110-300A-4100 What sleep equipment do I need for infants?
- WAC 110-300A-4120 What must I do to be sure that diaper changing is safe and does not spread infections?
- WAC 110-300A-4130 Do I need a nurse consultant?
- WAC 110-300A-4140 When are children required to have a change of clothing on-site?
- WAC 110-300A-5010 What first-aid supplies are required in my center?
- WAC 110-300A-5020 How do I maintain a safe environment?
- WAC 110-300A-5030 What do I need to include in my disaster plan?
- WAC 110-300A-5040 How do I maintain a clean and sanitized environment?
- WAC 110-300A-5050 How can I make sure water activities are as safe and sanitary as possible?
- WAC 110-300A-5060 How must I store maintenance and janitorial supplies?
- WAC 110-300A-5080 How do I safely get rid of sewage and liquid wastes?
- WAC 110-300A-5090 What are the fence requirements?
- WAC 110-300A-5100 What are the requirements for toilets, handwashing sinks and bathing facilities?
- WAC 110-300A-5110 What are the requirements if I do laundry on the premises or offsite?
- WAC 110-300A-5120 What kind of sleep and nap equipment do I need for children not in cribs, bassinets, infant beds or playpens?
- WAC 110-300A-5140 Are there any requirements for storage space provided for children?
- WAC 110-300A-5150 Are there temperature requirements for my facility?
- WAC 110-300A-5160 What do I need to know about pesticides?
- WAC 110-300A-5170 Can we have animals at the center?
- WAC 110-300A-6010 What are the regulations regarding discrimination?
- WAC 110-300A-6020 What are the regulations regarding religious activities?
- WAC 110-300A-6030 What are the special requirements regarding American Indian children?
- WAC 110-300A-6040 What are the requirements regarding child abuse and neglect?
- WAC 110-300A-6050 What substances are prohibited in the child care center or on the premises?
- WAC 110-300A-6060 Who is allowed to have unsupervised access to children in care?
- WAC 110-300A-7010 Information to be kept in the child's individual file.
- WAC 110-300A-7020 Am I required to track immunizations?
- WAC 110-300A-7030 Attendance records.
- WAC 110-300A-7032 Electronic attendance records—Records retention.
- WAC 110-300A-7040 Facility records.
- WAC 110-300A-7050 What personnel records and policies must I have?
- WAC 110-300A-7060 What injuries and illnesses or child abuse and neglect must I report?
- WAC 110-300A-7070 What circumstantial changes must I report to my licenser?
- WAC 110-300A-7080 Materials that must be posted.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 110-300B-0001 Authority.
- WAC 110-300B-0005 Intent.
- WAC 110-300B-0010 Definitions.
- WAC 110-300B-0050 Special needs accommodations.
- WAC 110-300B-1000 License required.
- WAC 110-300B-1025 Who must be licensed.
- WAC 110-300B-1050 The licensee.
- WAC 110-300B-1075 Child care subsidy.
- WAC 110-300B-1100 Tribal or military regulated or operated child care—Certification for payment.
- WAC 110-300B-1125 Orientation required.
- WAC 110-300B-1150 Preservice training.
- WAC 110-300B-1175 Basic STARS training.

WAC 110-300B-1200	Background checks.	WAC 110-300B-2126	Electronic attendance records—Records retention.
WAC 110-300B-1225	Noncriminal background checks for individuals thirteen to sixteen years of age.	WAC 110-300B-2150	Facility records.
WAC 110-300B-1300	Withdrawing an incomplete application.	WAC 110-300B-2175	Materials that must be posted.
WAC 110-300B-1325	Fees—When due.	WAC 110-300B-2200	Reporting incidents to 911 (emergency services).
WAC 110-300B-1375	Private septic system—Inspection and maintenance.	WAC 110-300B-2225	Reporting incidents to Washington poison center.
WAC 110-300B-1410	Department inspection.	WAC 110-300B-2250	Reporting incidents to a child's parent or guardian and the department.
WAC 110-300B-1420	Licensee declaration.	WAC 110-300B-2275	Other incident reporting to the department.
WAC 110-300B-1430	Initial license.	WAC 110-300B-2300	Reporting to DSHS children's administration intake.
WAC 110-300B-1450	Nonexpiring full license.	WAC 110-300B-2325	Reporting notifiable condition to health department.
WAC 110-300B-1475	Moves.	WAC 110-300B-2350	Policies.
WAC 110-300B-1525	Change in circumstances.	WAC 110-300B-2375	Parent/guardian policies (handbook).
WAC 110-300B-1600	Multiple licenses, certifications or authorizations.	WAC 110-300B-2400	Program/operations policies.
WAC 110-300B-1625	Exception to rule.	WAC 110-300B-2425	Staff policies.
WAC 110-300B-1650	Exception to rule—Alternate method of meeting a requirement.	WAC 110-300B-2450	Off-site activity policy.
WAC 110-300B-1700	Licensee minimum age.	WAC 110-300B-2525	Building codes.
WAC 110-300B-1725	Licensee minimum education.	WAC 110-300B-2550	Requesting local fire department visit.
WAC 110-300B-1735	Minimum education—Licensees licensed prior to March 31, 2012.	WAC 110-300B-2575	Combustible and flammable materials.
WAC 110-300B-1750	Tuberculosis.	WAC 110-300B-2600	Furnaces and other heating devices.
WAC 110-300B-1800	Ongoing training.	WAC 110-300B-2625	Electrical motors.
WAC 110-300B-1825	First aid and cardio pulmonary resuscitation (CPR) certification.	WAC 110-300B-2650	Inspection of fireplaces, wood stoves, or similar wood-burning heating devices.
WAC 110-300B-1850	HIV/AIDS training—Bloodborne pathogens plan.	WAC 110-300B-2675	Open flame devices, candles, matches and lighters.
WAC 110-300B-1875	Primary staff person.	WAC 110-300B-2700	Emergency flashlight.
WAC 110-300B-1900	Primary staff person minimum age.	WAC 110-300B-2725	Portable heaters and generators.
WAC 110-300B-1910	Basic STARS training.	WAC 110-300B-2775	Telephone.
WAC 110-300B-1925	Assistants and volunteers—Supervision.	WAC 110-300B-2825	Fire evacuation plan.
WAC 110-300B-1950	Assistants and volunteers—Minimum age.	WAC 110-300B-2850	Disaster plan.
WAC 110-300B-1975	Licensee/staff qualifications and requirements table.	WAC 110-300B-2875	Fire, disaster training for staff and volunteers.
WAC 110-300B-2025	Child records—Confidentiality.	WAC 110-300B-2900	Emergency drills.
WAC 110-300B-2050	Child records—Contents.	WAC 110-300B-2925	Record of emergency drills.
WAC 110-300B-2075	Licensee and staff records.	WAC 110-300B-2950	Smoke and carbon monoxide detectors.
WAC 110-300B-2100	Required records for household members.	WAC 110-300B-2975	Additional method to sound an alarm.
WAC 110-300B-2125	Child attendance records—Staff to child ratio records.		

WAC 110-300B-3000	Fire extinguishers.	WAC 110-300B-4250	Indoor temperature.
WAC 110-300B-3025	Fire extinguisher, smoke/carbon monoxide detector use and testing.	WAC 110-300B-4275	Fans, air conditioning or cross ventilation.
WAC 110-300B-3050	Monthly fire inspection.	WAC 110-300B-4300	Window coverings.
WAC 110-300B-3200	Health plan.	WAC 110-300B-4325	Stairs.
WAC 110-300B-3210	Contagious disease procedure.	WAC 110-300B-4350	Electrical outlets, cords and power strips.
WAC 110-300B-3250	Immunization tracking.	WAC 110-300B-4360	Area lighting.
WAC 110-300B-3275	Accepting a child who does not have current immunizations.	WAC 110-300B-4375	Lighting safety.
WAC 110-300B-3300	Immunizations—Exemption.	WAC 110-300B-4400	Exit doors.
WAC 110-300B-3315	Medication management.	WAC 110-300B-4425	Night latches, deadbolts and security chains.
WAC 110-300B-3325	Medication storage.	WAC 110-300B-4450	Interior door and locks.
WAC 110-300B-3375	Medication permission.	WAC 110-300B-4475	Emergency exit pathways.
WAC 110-300B-3425	Medication requirements.	WAC 110-300B-4500	Emergency exits—General.
WAC 110-300B-3450	Sedating a child prohibited.	WAC 110-300B-4525	Emergency exit doors.
WAC 110-300B-3475	Prescription medication.	WAC 110-300B-4550	Emergency exit windows.
WAC 110-300B-3525	Nonprescription medications.	WAC 110-300B-4575	Emergency exits from areas used only for sleeping/napping areas.
WAC 110-300B-3550	Children taking their own medication.	WAC 110-300B-4600	Commercial use areas—Fire wall.
WAC 110-300B-3575	Injuries requiring first aid only.	WAC 110-300B-4625	Bathrooms.
WAC 110-300B-3600	Injuries or illness requiring professional medical treatment.	WAC 110-300B-4650	Bathroom floors.
WAC 110-300B-3625	Handwashing.	WAC 110-300B-4675	Bathroom sinks.
WAC 110-300B-3650	Hand sanitizers.	WAC 110-300B-4700	Water temperature.
WAC 110-300B-3675	When handwashing is required.	WAC 110-300B-4725	Guns and other weapons.
WAC 110-300B-3700	Carpets.	WAC 110-300B-4750	Storage for each child's belongings.
WAC 110-300B-3725	Where children may sleep.	WAC 110-300B-4800	Pet and animal policy.
WAC 110-300B-3750	Mats, cots and other sleeping equipment.	WAC 110-300B-4850	Pet/animal health and safety.
WAC 110-300B-3775	Bedding.	WAC 110-300B-4875	Pets or other animals interacting with children.
WAC 110-300B-3800	Overnight sleeping.	WAC 110-300B-4900	Pet wastes.
WAC 110-300B-3825	Loft style and bunk beds.	WAC 110-300B-4925	Licensed outdoor space.
WAC 110-300B-3850	Cleaning laundry.	WAC 110-300B-4950	Rails on platforms, decks, and stairs.
WAC 110-300B-3875	Cleaning and sanitizing toys.	WAC 110-300B-5000	Play equipment.
WAC 110-300B-3925	Cleaning, sanitizing, and disinfecting table.	WAC 110-300B-5025	Outdoor physical activities.
WAC 110-300B-3950	Pest control.	WAC 110-300B-5050	Bouncing equipment prohibited.
WAC 110-300B-4025	Drugs and alcohol.	WAC 110-300B-5075	Playground equipment—Ground cover—Fall zones.
WAC 110-300B-4050	No smoking.	WAC 110-300B-5125	Daily outdoor activity.
WAC 110-300B-4075	First-aid kit.	WAC 110-300B-5150	Water activity—Supervision.
WAC 110-300B-4100	Poisons, chemicals and other substances.	WAC 110-300B-5175	Wading pools—Defined—Supervision.
WAC 110-300B-4200	Toys, equipment, and recalled items.	WAC 110-300B-5200	Swimming pools defined—Barriers and supervision.
WAC 110-300B-4225	Indoor licensed space—Minimum space.		

WAC 110-300B-5225	Bodies of water or water hazards on the licensed premises.	WAC 110-300B-6550	Developmental activities.
WAC 110-300B-5250	Bodies of water outside and near licensed space.	WAC 110-300B-6575	Activities to promote child growth and development.
WAC 110-300B-5400	Infant-toddler only license (birth to two years old).	WAC 110-300B-6600	Toys and play materials.
WAC 110-300B-5450	Two through five year old only license.	WAC 110-300B-6625	Art materials.
WAC 110-300B-5500	School age only license (over five years through twelve years).	WAC 110-300B-6650	Screen time.
WAC 110-300B-5550	Birth through twelve years license.	WAC 110-300B-6675	Screen time—Limitations.
WAC 110-300B-5600	Staff-to-child ratio.	WAC 110-300B-6700	Limiting screen time for children under two.
WAC 110-300B-5625	Capacity and ratio.	WAC 110-300B-6775	Diversity.
WAC 110-300B-5700	Capacity and ratio table—Birth through twelve year license.	WAC 110-300B-6800	Rest periods.
WAC 110-300B-5750	Supervision.	WAC 110-300B-6850	Overnight care.
WAC 110-300B-5775	Licensee absence.	WAC 110-300B-7000	Wheeled baby walkers prohibited.
WAC 110-300B-5810	Licensee notice of absences.	WAC 110-300B-7025	Infant "tummy time" positioning.
WAC 110-300B-5825	Licensee absence—Retraining for staff if standards are violated.	WAC 110-300B-7075	Infant and toddler sleeping or napping equipment.
WAC 110-300B-6000	Interactions with children.	WAC 110-300B-7085	Cribs.
WAC 110-300B-6025	Prohibited interactions.	WAC 110-300B-7125	Infant bottles.
WAC 110-300B-6050	Guidance and discipline.	WAC 110-300B-7150	Breast milk.
WAC 110-300B-6075	Positive options for discipline.	WAC 110-300B-7175	Bottle feeding infants.
WAC 110-300B-6100	Separating a child from the group.	WAC 110-300B-7200	Feeding solid food to infants.
WAC 110-300B-6125	Harmful or aggressive acts of children.	WAC 110-300B-7225	High chairs.
WAC 110-300B-6150	Prohibited actions.	WAC 110-300B-7250	Diapering and toileting.
WAC 110-300B-6175	Using alternate methods before using physical restraint.	WAC 110-300B-7275	Diaper disposal.
WAC 110-300B-6200	Physical restraint—Prohibited uses or methods.	WAC 110-300B-7300	Diaper changing.
WAC 110-300B-6225	Physical restraint—Holding method allowed.	WAC 110-300B-7350	Toilet training.
WAC 110-300B-6250	Notice and documenting use of physical restraint.	WAC 110-300B-7375	Potty chairs or modified toilet seats.
WAC 110-300B-6275	Abuse and neglect—Protection and training.	WAC 110-300B-7500	Food must meet USDA guidelines.
WAC 110-300B-6400	Off-site activities—Parent or guardian permission.	WAC 110-300B-7525	Parent or guardian-provided food.
WAC 110-300B-6425	Off-site activity supervision.	WAC 110-300B-7550	Home canned foods.
WAC 110-300B-6450	Off-site activity—Emergency information and supplies.	WAC 110-300B-7575	Drinking water.
WAC 110-300B-6475	Transportation.	WAC 110-300B-7600	Serving milk.
WAC 110-300B-6500	Using public transportation.	WAC 110-300B-7625	Meal and snack schedule.
WAC 110-300B-6525	Transporting children—Limited periods.	WAC 110-300B-7650	Serving foods.
		WAC 110-300B-7675	Food handler permits.
		WAC 110-300B-7680	Safe food handling.
		WAC 110-300B-7700	Washing dishes.
		WAC 110-300B-7725	Food containers and utensils.
		WAC 110-300B-7750	Food preparation area.
		WAC 110-300B-8000	Facility licensing compliance agreements.
		WAC 110-300B-8010	Nonreferral status.
		WAC 110-300B-8025	Time period for correcting a violation.
		WAC 110-300B-8050	Civil monetary penalties (fines).

- WAC 110-300B-8060 When fines are levied.  
 WAC 110-300B-8075 Fines—Payment period.  
 WAC 110-300B-8100 Notice of fine—Posting.  
 WAC 110-300B-8125 Failure to pay a fine—Department action.  
 WAC 110-300B-8150 Denial, suspension, revocation, modification, or noncontinuation of a license.  
 WAC 110-300B-8175 Violations—Enforcement action.  
 WAC 110-300B-8225 Notice of license denial, suspension, revocation, or modification.  
 WAC 110-300B-8250 Probationary license.  
 WAC 110-300B-8275 Probationary license—Cause.  
 WAC 110-300B-8300 Issuing a probationary license.  
 WAC 110-300B-8325 Refusing a FLCA or probationary license.  
 WAC 110-300B-8350 Providing unlicensed care—Notice.  
 WAC 110-300B-8375 Unlicensed care—Fines and other penalties.  
 WAC 110-300B-8400 Hearing process.

**WSR 19-14-090****PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed July 1, 2019, 12:07 p.m., effective August 1, 2019]

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

Purpose: Chapter 246-480 WAC, Drug take-back program, the department of health (department) is adopting a new chapter of rules to implement a single uniform, statewide system of regulation for the safe and secure collection of medicines through a drug take-back system. The enabling legislation (chapter 69.48 RCW) is very descriptive of how the drug take-back program is to be established and executed, including the functions that the department must perform. The purpose of the rule is to clarify parts of RCW needing more detail.

The rules primarily address administrative and oversight details to include:

A process to identify covered manufacturers who must pay into the drug take-back program.

The type of budget information required in the program operator's proposal submitted to the program for approval, as well as budget information submitted by the program operator with each annual report.

The process to appeal department decisions.

How to determine areas in the state being underserved by the drug take-back program.

Setting fees.

Citation of Rules Affected by this Order: New WAC 246-480-010, 246-480-020, 246-480-030, 246-480-040, 246-480-050, 246-480-060, 246-480-070, 246-480-080, 246-480-090, and 246-480-990.

Statutory Authority for Adoption: RCW 69.48.180, 69.48.120.

Adopted under notice filed as WSR 19-08-085 on April 3, 2019.

Changes other than editing from proposed to adopted version: WAC 246-480-040(5), added language to clarify that the program costs to be considered when submitting a program proposal to the department for approval must include each item listed in this WAC subsection as a minimum, but the department will also accept any information beyond that if provided.

WAC 246-480-040 (5)(b)(iii), corrected a citation as follows "... personnel costs in (a)(i)(A) of this subsection."

WAC 246-480-060 (2)(c), "driving distances and times" was changed to "travel distances and times" to clarify the department's original intent that a variety of distance calculations will be included when determining "underserved areas."

WAC 246-480-070, "sites" was changed to "collection sites" for clarity.

WAC 246-480-080, disposal of covered drugs, was removed from the proposed rule and the remaining sections renumbered accordingly. The department has determined that the notification mechanism in RCW 69.48.050 (5)(a) for program operators to notify the department about the disposal sites it intends to use after the program has begun operating, along with the department's ability to require information about disposal site type and permit number [is] sufficient for the department to implement the statute.

A final cost-benefit analysis is available by contacting Carly Bartz-Overman, Department of Health, P.O. Box 47850 Olympia, WA 98504-7850, phone 360-236-4698, fax 360-236-2901, TTY 360-833-6388 or 711, email safemedreturn@doh.wa.gov, web site <https://www.doh.wa.gov/ForPublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/SafeMedicationReturnProgram/>.

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 10, 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 10, Amended 0, Repealed 0.

Date Adopted: June 27, 2019.

John Weisman, DrPH, MPH  
Secretary

**Chapter 246-480 WAC**  
**DRUG TAKE-BACK PROGRAM**

NEW SECTION

**WAC 246-480-010 Purpose and scope.** The purpose of this chapter is to:

(1) Establish a single uniform, statewide system of regulation for safe and secure collection and disposal of medicines through a uniform drug take-back program, operated and funded by drug manufacturers, and regulated by the department of health consistent with chapter 69.48 RCW.

(2) Establish criteria and an approval process for program operators to operate a drug take-back program under chapter 69.48 RCW.

(3) Ensure every covered manufacturer whose drugs are sold in or into Washington complies with chapter 69.48 RCW and this chapter.

NEW SECTION

**WAC 246-480-020 Definitions.** The definitions in RCW 69.48.020 apply to this chapter unless the context clearly indicates otherwise.

NEW SECTION

**WAC 246-480-030 Identification of covered manufacturers.** (1) Upon review of an inquiry response letter described in RCW 69.48.040(3), the department shall notify the person or entity in writing whether or not the person or entity is considered a covered manufacturer. If the department determines that the person or entity is a covered manufacturer, the written notice will include a warning regarding the penalties for violation of this chapter, as authorized in RCW 69.48.110(2).

(2)(a) Within thirty days after the first full year of a drug take-back program's implementation, and annually thereafter, the department may provide a list of covered manufacturers potentially not participating in a drug take-back program to each approved program operator.

(b) Within thirty days of receiving such a list, approved program operators may provide any comments on the list to the department.

(c) Within thirty days of receiving and considering any approved program operator comments, the department may publish on its web site a list of all covered manufacturers not participating in a drug take-back program.

(3) The department shall remove any covered manufacturer identified in the published list if the covered manufacturer participates in an approved drug take-back program.

NEW SECTION

**WAC 246-480-040 Drug take-back program proposal components.** In addition to this section, the drug take-back proposal must comply with chapter 69.48 RCW. Each proposal must be on a form provided by the department and must:

(1) Contain a table of contents clearly denoting, at a minimum, where each component specified in RCW 69.48.050 is located within the program proposal;

(2) Provide a description of a drug collection system that includes:

(a) A list of participating authorized collectors;

(b) A list of drop-off (kiosk) locations; and

(c) A detailed description of how mail-back distribution locations or periodic collection events will be used.

(3) Demonstrate that the policies and procedures to be followed by persons handling unwanted covered drugs collected under the drug take-back program as required in RCW 69.48.050 (2)(f) includes:

(a) How all entities participating in the drug take-back program will operate under all applicable federal and state laws and rules including, but not limited to, United States Drug Enforcement Administration rules; and

(b) How any pharmacy collection sites will operate under applicable rules from the Washington state pharmacy quality assurance commission.

(4) Include a detailed description of the geographical distribution of collection sites that will provide equitable and reasonably convenient access to all residents consistent with RCW 69.48.060;

(5) Include a budget estimate for providing the statewide program. Estimates must show total costs for each of the categories described in this subsection and a sum total of all program costs representing the totals for each category:

(a) Category 1: Administrative costs. A total for all administrative costs must include, but is not limited to:

(i) Contracted and employed personnel overhead costs;

(ii) Legal fees;

(iii) Local and state business licensing fees;

(iv) Local, state, and federal taxes;

(v) Property costs, including rentals;

(vi) Utilities, phone, and internet; and

(vii) General equipment and supplies.

(b) Category 2: Collection and disposal costs. A total for all collection and disposal costs must include, but is not limited to:

(i) Collection, transportation, and disposal of drugs;

(ii) Purchase, maintenance, and replacement of collection receptacles;

(iii) Compensation of authorized collectors, if separate from personnel costs in (a)(i) of this subsection; and

(iv) Production, distribution, and postage of mailers.

(c) Category 3: Communication costs. A total for all communication costs must include, but is not limited to:

(i) Advertising;

(ii) Marketing;

(iii) Web site creation and maintenance; and

(iv) Operation of a toll-free phone number.

(6) Describe how the program operator will work with Washington state counties and the department to incorporate local programs into their proposed statewide plan consistent with RCW 69.48.160 (1)(b); and

(7) Include an implementation plan and schedule for initiating operation of the approved drug take-back program.

NEW SECTION

**WAC 246-480-050 Program application.** (1) A drug take-back program operator must submit its program proposal and substantial changes to an approved program on forms provided by the department.

(2) If the department takes enforcement action as provided in RCW 69.48.050 (3)(c)(iv), the applicant through its authorized representative may request an adjudicative proceeding under chapter 246-10 WAC. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within twenty-eight days of the program operator's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within twenty-eight days of the date of the program operator's receipt of the adverse notice, the secretary's decision is final.

NEW SECTION

**WAC 246-480-060 Collection of covered drugs—Underserved areas.** (1) To assist the program operators in complying with RCW 69.48.060 (3)(c) and (d), the department will determine and locate each population center consistent with RCW 69.48.060 and this chapter using geographical information systems (GIS) mapping technology, and will publish updated population data to the department's web site annually.

(2) The department, in consultation with the local health jurisdiction, will determine underserved areas described in RCW 69.48.060(3) using the following criteria:

- (a) Population density of counties;
- (b) Estimated number of participating collection sites;
- (c) Travel distances and times;
- (d) Accessible public facilities such as libraries, town halls, and police and fire departments; and
- (e) Geographic features that may inhibit access to collection locations such as mountains and islands.

NEW SECTION

**WAC 246-480-070 Promotion.** Approved program operators must update their list of authorized collectors, collection sites, locations to receive mailers, and locations for drug take-back events at least quarterly on their web site.

NEW SECTION

**WAC 246-480-080 Program operator annual report.**

(1) To comply with RCW 69.48.100(1), each program operator shall submit an annual report to the department by July 1st on a form developed by the department.

(2) In addition to the elements identified and described in RCW 69.48.100, the report must include a summary of the program's annual expenditures organized using the same criteria as described in WAC 246-480-040(5).

NEW SECTION

**WAC 246-480-090 Proprietary information.** (1) Consistent with RCW 69.48.170, chapter 42.56 RCW, and other applicable laws, proprietary information submitted to the department under chapter 69.48 RCW is exempt from public disclosure. The manufacturer or drug take-back organization must identify in writing the information it considers proprietary when submitting information to the department. Information automatically disclosable under law may not be marked proprietary. Information not deemed automatically disclosable cannot be marked as proprietary in their entirety.

(2) If the department receives a request for disclosure under chapter 42.56 RCW which includes information identified by the manufacturer or drug take-back organization as proprietary, the department will notify the manufacturer or drug take-back organization of the status of such documents prior to their release. The manufacturer or drug take-back organization may seek to enjoin the release of the information as provided under RCW 42.56.540

NEW SECTION

**WAC 246-480-990 Fees.** This section establishes the initial and annual fees for a program operator implementing a drug take-back program under chapter 69.48 RCW and this chapter.

(1) Initial fee. By no later than October 1, 2019, a program operator shall submit to the department an initial fee of seven hundred thousand dollars.

(2) Renewal fee.

(a) By August 1, 2020, and each August 1st thereafter, the department shall notify a program operator the amount of its annual renewal fee as determined according to RCW 69.48.120. Renewal fees will reflect the department's actual administrative, oversight, enforcement, and contractual costs for that fiscal year, or not more than ten percent of the program operator's annual expenses as reported on July 1st of each year, whichever amount is smaller.

(b) By October 1, 2020, and each October 1st thereafter, a program operator shall submit to the department the renewal fee.

**WSR 19-14-093****PERMANENT RULES****HEALTH CARE AUTHORITY**

(School Employees Benefits Board)

[Admin # 2019-01—Filed July 1, 2019, 2:06 p.m., effective August 1, 2019]

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

Purpose: **1. Implement school employees benefits board (SEBB) policy resolutions and statutory changes:**

- Created WAC 182-30-060 to establish the error correction process to be used within the SEBB program when an employer error is made;
- Created WAC 182-30-080 to establish the process for the enrollment of newly hired school employees and for school employees who are regaining eligibility. Establishes a default enrollment if the school employee



doesn't enroll in or waive SEBB benefits within thirty-one days of establishing eligibility for the employer contribution. Add information on uninterrupted coverage for school employees moving between SEBB organizations given certain circumstances, and for school employees returning to the same SEBB organization given certain circumstances;

- Created WAC 182-30-130 to establish the eligibility criteria and program requirement for locally negotiated SEBB benefits;
- Amended WAC 182-31-040 to include school employee eligibility for mid- to late-year hires within a school year and for school employees who are presumed eligible based on their work pattern the last two years. Added that school employees may only stack hours within one SEBB organization to establish SEBB benefits eligibility and that school employees may also be eligible for locally negotiated benefits;
- Created WAC 182-31-070 to establish that dual enrollment in SEBB benefits is prohibited and that if a school employee has eligibility at more than one SEBB organization how that will be resolved;
- Created WAC 182-31-080 to establish the process for school employees to waive SEBB benefits and how to return from a waive status;
- Created WAC 182-31-091 to establish SEBB continuation coverage eligibility for school employees and their dependents who don't meet SEBB eligibility standards at the start of the program or who were already on a SEBB organization's continuation coverage on December 31, 2019;
- Created WAC 182-31-100 to establish certain types of approved leave that will be allowed to have continuation coverage for up to twenty-nine months;
- Created WAC 182-31-190 to establish eligibility and procedural requirements for the SEBB wellness incentive;
- Amended WAC 182-32-2010 to include the process that a school employee will use to appeal wellness incentive decisions;
- Amended WAC 182-32-2030 to include the process that a school employee will use to appeal SEBB program wellness incentive decisions;
- Created WAC 182-32-2040 to include the process that a school employee will use to appeal wellness incentive program requirements; and
- Amended the definition of "school employee" in chapters 182-30, 182-31, and 182-32 WAC to reflect that nonrepresented educational service district employees will join SEBB in January 2024 to implement ESHB 2140.

## 2. Making technical amendments to:

- Amended the purpose statements within chapters 182-30 and 182-31 WAC to include the locally negotiated SEBB benefits eligibility and enrollment;
- Created WAC 182-30-030 to describe what the employer contribution will be used for;
- Amended WAC 182-30-040 to include information on subscribers enrolling in continuation coverage and when

and where payments are due. Also, added that if a payment plan [is] requested it can last for up to twelve months in duration and provide clarifying information about premium refunds;

- Amended WAC 182-30-050 to include information on what happens to school employees that waive coverage as related to surcharge, that school employees that waive their coverage to be on their spouse or state register[ed] domestic partner's SEBB benefits will not receive the spousal/state registered domestic partner's surcharge, that spouses or state registered domestic partners who elect not to enroll in TRICARE will not receive the surcharge;
- Amended WAC 182-30-070 to include information on what happens to the employer contribution if a school employee waives coverage under regular SEBB eligibility and under locally negotiated SEBB benefits;
- Amended WAC 182-30-075 to include additional requirement when a school employee needs to update their address with the SEBB program;
- Created WAC 182-30-081 to address the requirements of the first SEBB open enrollment period;
- Created WAC 182-30-085 to address what happens if the school employee's health plan becomes unavailable due to a change in contracted service area or eligibility for medicare;
- Amended WAC 182-30-090 to clarify that newly hired school employee must enroll with thirty-one days and not sixty days. That a dental plan is available if it is within fifty miles of the new address. Amended the dependent moves into or out of the United States life event to include the requirement that the change in residence results in the dependent losing their health insurance;
- Amended WAC 182-30-100 to reflect that school employees not subscribers were impacted by this rule;
- Amended WAC 182-31-020 to include a definition of "layoff," and "plan year";
- Amended WAC 182-31-090 to clarify issues about who is eligible and where and when to turn in the required forms for COBRA coverage;
- Amended WAC 182-31-110 to include requirements for the Washington state paid family medical leave program;
- Created WAC 182-31-120 to address the continuation coverage options available when a school employee is appealing a grievance;
- Created WAC 182-31-130 to address the continuation coverage options available when a dependent ceases to meet the SEBB program's eligibility standard;
- Created WAC 182-31-135 to address the continuation coverage options available to a survivor of a school employee;
- Amended WAC 182-31-150 to clarify how to remove a dependent who is no longer eligible for benefits and amended the dependent moves into or out of the United States life event to include the requirement that the change in residence results in the dependent losing their health insurance;

- Amended WAC 182-32-020 with correct RCW citation as well as adding WAC citation references regarding formal administrative hearings;
- Amended WAC 182-32-064 to include that SEBB organizations must follow SEBB program rules and instructions from HCA;
- Amended WAC 182-32-066 to include that the appellant has the burden of proof in a brief adjudicative proceeding or a formal administrative hearing;
- Amended WAC 182-32-120 to clarify that the time prescribed is ten days or less;
- Amended WAC 182-32-2000 with correct RCW citation;
- Amended WAC 182-32-2105 to clarify what the presiding officer, review officer, or officers do after a withdrawal request is received;
- Amended WAC 182-32-2010 to include the process that a school employee will use to appeal a decision regarding SEBB property and casualty appeals and wellness appeals;
- Amended WAC 182-32-2120 clarified no evidence may be offered in support of a motion for reconsideration;
- Amended WAC 182-32-2130 to correct RCW citation references and to clarify neither the SEBB program or a SEBB organization may request judicial review;
- Amended WAC 182-32-2160 to correct RCW citations, and to clarify the director designates a hearing officer to conduct formal administrative hearing;
- Amended WAC 182-32-3030 to remove de novo (anew);
- Amended WAC 182-32-3100 to correct chapter and subsection references;
- Amended WAC 182-32-3120 to clarify who may request the hearing officer quash or change a subpoena request;
- Amended WAC 182-32-3140 to clarify the dismissal order becomes the health care authority's (HCA) final decision without further action if no request is received;
- Amended WAC 182-32-3180 to clarify the requirements for a party filing a request for reconsideration;
- Amended WAC 182-32-3190 to correct WAC citation reference; and
- Amended WAC 182-32-3200 to correct RCW citation references.

### 3. Amending rule to improve administration of the SEBB program:

- Within the definition sections of chapters 182-30, 182-31, and 182-32 WAC:
  - Amended the definition of "life insurance" to remove the reference to accidental death and dismemberment (AD&D) and created a new definition for "AD&D";
  - Amended the definition of "calendar days or days" to include all state holidays as described in RCW 1.16.050;
  - Amended the definition of "dependent care assistance program" to reflect the correct statute and to incorporate who may participate;
  - Added a definition of "employer-based group health plan";
  - Amended the definition of "enrollee" to include locally negotiated SEBB benefits;
  - Amended the definition of "health plan" to include the vision benefit;
  - Amended the definition of "medical flexible spending arrangement" to reflect the correct statute and to incorporate who may participate;
  - Amended the statutory reference in "premium payment plan";
  - Added a definition of "public employees benefits board or PEBB";
  - Amended the definition of "SEBB insurance coverage" to include AD&D and to specify long-term disability;
  - Amended the definition of "SEBB program" to include locally negotiated SEBB benefits; and
  - Amended the definition of "subscriber" to include that they must be enrolled in SEBB benefits.
- Within the definition sections of chapters 182-30 and 182-31 WAC:
  - Removed the definition of "disability insurance." This idea is already included with the definition of "LTD insurance";
  - Amended the definition of "employer contribution" to include the funding amount paid for locally negotiated SEBB benefits;
  - Amended the definition of "forms" to include "form";
  - Amended the definition of "special open enrollment" to include an additional WAC citation reference;
  - Added a definition of "supplemental coverage";
  - Added a definition of "waive"; and
  - Added a definition of "week."
- Amended WAC 182-30-020 created a new definition of "salary reduction plan," removed the definition of "short-term disability insurance," and amended the definition of "appellant";
- Amended WAC 182-30-090 to clarify the disruption of care life event;
- Amended WAC 182-31-020 and 182-32-020 to clarify the definition of "documents";
- Amended WAC 182-31-060 to clarify who is eligible for the salary reduction plan;
- Amended WAC 182-31-140 to clarify dependent verification requirements and how and when a school employee must notify the SEBB program when a dependent is no longer eligible for benefits;
- Amended WAC 182-31-160 to provide clarity on when a dependent may be removed from coverage;
- Amended WAC 182-32-020 add a definition of "dispositive motion," to remove the definition of "employer contribution," and "employer-paid coverage"; and
- Amended WAC 182-32-2080 and 182-32-3010 to clarify when HCA employees may represent an appellant.

Citation of Rules Affected by this Order: New WAC 182-30-030, 182-30-060, 182-30-080, 182-30-081, 182-30-085, 182-30-130, 182-31-070, 182-31-080, 182-31-091, 182-31-100, 182-31-120, 182-31-130, 182-31-135, 182-31-190 and 182-32-2040; and amending WAC 182-30-010, 182-30-

020, 182-30-040, 182-30-050, 182-30-070, 182-30-075, 182-30-090, 182-30-100, 182-30-120, 182-31-010, 182-31-020, 182-31-030, 182-31-040, 182-31-050, 182-31-060, 182-31-090, 182-31-110, 182-31-140, 182-31-150, 182-31-160, 182-32-020, 182-32-064, 182-32-066, 182-32-120, 182-32-130, 182-32-2000, 182-32-2010, 182-32-2020, 182-32-2030, 182-32-2050, 182-32-2080, 182-32-2085, 182-32-2100, 182-32-2105, 182-32-2120, 182-32-2130, 182-32-2150, 182-32-2160, 182-32-3000, 182-32-3010, 182-32-3030, 182-32-3080, 182-32-3100, 182-32-3120, 182-32-3130, 182-32-3140, 182-32-3180, 182-32-3190, and 182-32-3200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; EHB 2242 and ESSB 6241.

Other Authority: SEBB policy resolutions.

Adopted under notice filed as WSR 19-11-125 on May 22, 2019.

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 15, Amended 49, 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 15, Amended 49, Repealed 0.

Date Adopted: July 1, 2019.

Wendy Barcus  
Rules Coordinator

## Chapter 182-30 WAC

### ~~(ENROLLMENT)~~ PROCEDURES

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-010 Purpose.** The purpose of this chapter is to establish school employees benefits board (SEBB) program enrollment criteria and procedures for school employees eligible for SEBB benefits under RCW 41.05.740 (6) ~~((d)(i)). This chapter does not address where a SEBB organization has locally negotiated to offer SEBB benefits to school employees who are anticipated to work less than six hundred thirty hours in a school year as authorized in RCW 41.05.740 (6)(e)).~~

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-020 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means ~~((a once yearly))~~ an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, ~~((enroll))~~ enroll in coverage, or waive enrollment in SEBB medical. School employees participating in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), ~~((and))~~ or the medical flexible spending arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal state holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of health plan coverage available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB ~~((board))~~ policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB 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 SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

~~("Disability insurance" includes any basic long term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long term disability or supplemental short term disability paid for by the employee.)~~ "Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical,

vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC ((182-31-060)) 182-31-040 or 182-30-130.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the SEBB 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.

"Life insurance" ~~((for eligible school employees includes))~~ means any basic life insurance ~~((and accidental death and dismemberment (AD&D) insurance))~~ paid for by the ~~((school employees benefits board ()))~~ SEBB ~~((+))~~ organization, as well as supplemental life insurance ~~((and supplemental AD&D insurance))~~ offered to and paid for by school employees for themselves and their dependents.

"LTD insurance" or "long-term disability insurance" ~~((includes))~~ means any basic long-term disability insurance paid for by the ~~((school employees benefits board ()))~~ SEBB ~~((+))~~ organization and any supplemental long-term disability insurance offered to and paid for by the school employee.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under ~~((this))~~ chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under ~~((this))~~ chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Public employees benefits board" or "PEBB" means the board established under RCW 41.05.055.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pre-tax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- ~~All employees of school districts ((educational service districts,))~~ and charter schools established under chapter 28A.710 RCW;

- Represented employees of educational service districts; and

- Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board established in RCW 41.05.740.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) and eligible dependents (as described in 182-31-140).

~~((Short term disability insurance" includes any basic short term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental short term disability insurance offered to and paid for by the school employee.))~~

"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, school employees may enroll in or waive enrollment in SEBB medical. School employees eligible to participate in the salary reductions plan may enroll in or revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equiv-

alent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organization, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance, accidental death and dismemberment (AD&D) insurance coverage, or long-term disability coverage purchased by the school employee in addition to the basic coverage provided by the school employees benefits board (SEBB) organization.

"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.

"Waive" means an eligible school employee affirmatively declining enrollment in a SEBB health plan because the school employee is enrolled in other employer-based group medical, TRICARE plans, or medicare as allowed under WAC 182-31-080.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

#### NEW SECTION

**WAC 182-30-030 Employer contribution for school employees benefits board (SEBB) benefits.** The employer contribution must be used to provide school employees benefits board (SEBB) insurance coverage for the basic life insurance benefit, basic accidental death and dismemberment (AD&D) insurance benefit, basic long-term disability (LTD) insurance benefit, medical insurance, vision insurance, dental insurance, SEBB program administrative costs, the school employee remittance required in RCW 28A.400.410 and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for school employees employed by SEBB organizations.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-040 Premium payments and premium refunds.** School employees benefits board (SEBB) benefits premiums and applicable premium surcharges for all subscribers are due as described in this section, except when a SEBB organization is correcting its enrollment error as described in WAC 182-30-060.

(1) **Premium payments.** ~~((School employees benefits board (-) SEBB (-) insurance coverage))~~ benefits premiums and applicable premium surcharges for all subscribers become due the first of the month in which SEBB ~~((insurance~~

~~coverage is))~~ benefits are effective. Premiums and applicable premium surcharges are due from the subscriber for the entire month of ~~((PEBB insurance coverage))~~ SEBB benefits and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in continuation coverage as described in WAC 182-31-090, 182-31-091, 182-31-100, 182-31-120, or 182-31-130, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than forty-five days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing SEBB medical must be made to the HCA as well as premiums associated with continuing SEBB dental or vision insurance coverage. Premiums associated with life insurance coverage and accidental death and dismemberment (AD&D) coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

(b) For school employees who are eligible for the employer contribution, ~~((the school employee's))~~ premiums and applicable premium surcharges are due to the SEBB organization. If a school employee elects supplemental coverage, the school employee is responsible for payment of premiums ~~((starting))~~ from the month the supplemental coverage begins.

~~((b))~~ (c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the SEBB organization, subscriber, or a subscriber's legal representative to the ~~((health care authority (-) HCA (-)))~~. For subscribers not eligible for the employer contribution or school employees eligible for the employer contribution as described in WAC 182-31-110, monthly premiums or applicable premium surcharges that remain unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber's monthly premiums or applicable premium surcharges remain unpaid for sixty days from the original due date, the subscriber's SEBB ~~((insurance coverage))~~ benefits will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan up to twelve months in duration with the subscriber or the subscriber's legal representative upon request.

~~((c))~~ (d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA and the monthly premiums or applicable premium surcharges remain unpaid for thirty days; or

(ii) Premium payments or applicable premium surcharges received by the HCA are underpaid by an amount

greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for thirty days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** SEBB benefits premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the SEBB organization any excess premiums and applicable premium surcharges paid during the three month adjustment period, except as indicated in WAC 182-31-120.

(b) If a SEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-32-2010, ((showing proof)) and provides clear and convincing evidence of extraordinary circumstances ((beyond their control)), such that ((it was effectively impossible to)) the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within sixty days after the event that created a change of premiums, the SEBB director, the SEBB director's designee, or the SEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges that does not exceed twelve months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

(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 applicable premium surcharges paid during the time they were enrolled under the federal program if approved by SEBB director or the SEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the SEBB organization, subscriber, or beneficiary.

(e) SEBB organization errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the school employee or beneficiary as described in WAC 182-30-060.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-050 What are the requirements regarding premium surcharges?** (1) A subscriber's account will incur a premium surcharge in addition to the subscriber's monthly medical premium, when any enrollee, thirteen years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee, thirteen years and older, enrolled in their school employees benefits board (SEBB) medical engages in tobacco use. The subscriber must attest as described in (a)(i) through ~~((iv))~~ (v) of this subsection:

(i) A school employee who is newly eligible or regains eligibility for the employer contribution toward SEBB benefits must complete the required form to enroll in SEBB med-

ical as described in WAC 182-30-080 (1) or (3). The school employee must include their attestation on ~~((the required))~~ that form. The school employee must submit the ~~((attestation))~~ form to their SEBB organization. If the school employee's attestation results in a premium surcharge, it will take effect the same date as SEBB medical begins;

(ii) If there is a change in the tobacco use status of any enrollee, thirteen years and older on the subscriber's SEBB medical, the subscriber must update their attestation on the required form. A school employee must submit the form to their SEBB organization. ~~((All other))~~ A subscriber((s)) on continuation coverage must submit their updated ((attestation)) form to the SEBB program((:)). The attestation change will apply as follows:

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first of the month, the change to the surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

(iii) If a subscriber submits the required form to enroll a dependent, thirteen years and older, in SEBB medical as described in WAC 182-31-150, the subscriber must attest for their dependent on the required form. A school employee must submit the form to their SEBB organization. ~~((All other))~~ A subscriber((s)) on continuation coverage must submit their form to the SEBB program. A change that results in a premium surcharge will take effect the same date as SEBB medical begins; ~~((or))~~

(iv) An enrollee, thirteen years and older, who elects to continue medical coverage as described in WAC 182-31-090, must provide an attestation on the required form if they have not previously attested as described in (a) of this subsection. The enrollee must submit their ~~((updated))~~ form to the SEBB program. An attestation that results in a premium surcharge will take effect the same date as SEBB medical begins ~~((:))~~; or

(v) A school employee who previously waived SEBB medical must complete the required form to enroll in SEBB medical as described in WAC 182-31-080(3). The school employee must submit their attestation on that form. A school employee must submit the form to their SEBB organization. An attestation that results in a premium surcharge will take effect the same date as SEBB medical begins.

Note: A school employee who waives SEBB medical as described in WAC 182-31-080 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the school employee remains in waived status.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in (a) of this subsection.

(c) The SEBB program will provide ~~((a))~~ reasonable alternatives for enrollees who use tobacco products. A subscriber can avoid the tobacco use premium surcharge if the subscriber attests on the required form that all enrollees who use tobacco products enrolled in or accessed one of the applicable reasonable alternatives offered below:

(i) An enrollee who is eighteen years and older and uses tobacco products is currently enrolled in the free tobacco cessation program through their SEBB medical.

(ii) An enrollee who is thirteen through seventeen years old and uses tobacco products accessed the information and resources aimed at teens on the Washington state department of health's web site at <https://teen.smokefree.gov>.

(iii) A subscriber may contact the SEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.

(2) A subscriber will incur a premium surcharge, in addition to the subscriber's monthly medical premium, if an enrolled spouse or state registered domestic partner (~~(elected)~~) has chosen not to enroll in another employer-based group medical where the spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost a school employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic and the benefits have an actuarial value of at least ninety-five percent of the actuarial value of the PEBB UMP Classic's benefits.

(a) A subscriber who enrolled a spouse or state registered domestic partner under their SEBB medical may only attest during the following times:

(i) When a subscriber becomes eligible to enroll a spouse or state registered domestic partner in SEBB medical (~~(or during the annual open enrollment)~~) as described in WAC 182-31-150. The subscriber must complete the required form to enroll their spouse or state registered domestic partner, and include their attestation on that form. The school employee must submit the form to their SEBB organization. (~~(Any other)~~) A subscriber on continuation coverage must submit the form to the SEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as SEBB medical begins(~~(;)~~).

(ii) (~~When a special open enrollment event occurs. The subscriber must submit the required form to enroll their spouse or state registered domestic partner in SEBB medical and include their attestation on the required form. A school employee must submit the form to their SEBB organization. Any other subscriber must submit the form to the SEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as SEBB medical begins;~~

(~~iii~~)) During the annual open enrollment. A subscriber must attest if during the month prior to the annual open enrollment the subscriber was:

- Incurring the surcharge;
- Not incurring the surcharge because the spouse's or state registered domestic partner's share of the medical premium through their employer-based group medical was more than ninety-five percent of the additional cost a school employee would be required to pay to enroll a spouse or state registered domestic partner in the PEBB UMP Classic; or
- Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or state registered domestic partner's employer-based group medical was less

than ninety-five percent of the actuarial value of the PEBB UMP Classic's benefits.

A subscriber must update their attestation on the required form. A school employee must submit (~~(an updated attestation)~~) the form to their SEBB organization. (~~(Any other)~~) A subscriber on continuation coverage must submit the form to the SEBB program. The subscriber's attestation or any correction to a subscriber's attestation must be received no later than December 31st of the year in which the annual open enrollment occurs. If the subscriber's attestation results in a premium surcharge, being added or removed, the change to the surcharge will take effect January 1st of the following year(~~(; and~~  
(~~iv~~)).

(ii) When there is a change in the spouse's or state registered domestic partner's employer-based group medical. A subscriber must update their attestation on the required form. A school employee must submit (~~(an updated attestation)~~) the form to their SEBB organization no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical status changes. (~~(Any other)~~) A subscriber on continuation coverage must submit (~~(an updated attestation)~~) the form to the SEBB program no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical status changes(~~(;)~~).

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first day of the month, the change to the premium surcharge begins on that day(~~(;)~~).

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the premium surcharge begins on that day.

Exceptions:

(1) A school employee who waives SEBB medical as described in WAC 182-31-080 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the employee remains in waived status.

(2) A school employee who covers their spouse or state registered domestic partner who has waived their own SEBB medical must attest as described in this subsection, but a will not incur a premium surcharge if the school employee provides an attestation that their spouse or state registered domestic partner is eligible for SEBB coverage.

(3) A subscriber who covers their spouse or state registered domestic partner who elected not to enroll in a TRICARE plan must attest as described in this subsection, but will not incur a premium surcharge if the subscriber provides an attestation that their spouse or state registered domestic partner is eligible for a TRICARE plan.

(b) A premium surcharge will be applied to a subscriber who does not attest as described in (a) of this subsection.

NEW SECTION

**WAC 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors?** (1) If a SEBB organization fails to provide notice of benefits eligibility or accurately enroll a school employee or their dependents in benefits, the error

will be corrected prospectively with enrollment in benefits effective the first day of the month following the date the error is identified. The health care authority approves all error correction actions and determines if additional recourse, which may include retroactive enrollment, is warranted.

(2) If a SEBB organization errs and enrolls a school employee or their dependents in SEBB insurance coverage when they are not eligible and there was no fraud or intentional misrepresentation by the school employee involved, premiums and any applicable premium surcharges already paid by the school employee will be refunded by the SEBB organization to the school employee. The error will be corrected prospectively with termination of benefits effective the first day of the month following the date the error is identified.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-070 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible school employees.** School employees benefits board (SEBB) organizations must pay the employer contributions to the health care authority (HCA) for SEBB (~~(insurance)~~) benefits coverage for all eligible school employees and their dependents.

(1) Employer contributions are set by the HCA, and are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. The employer contribution for school employees eligible under RCW 41.05.740 (6)(e) are set by the HCA.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer SEBB (~~(insurance)~~) benefits coverage for school employees.

(3) (~~(Each)~~) Eligible school employee of a SEBB organization on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution as described in WAC 182-31-110.

(4) The entire employer contribution is due and payable to HCA even if SEBB medical is waived as described in WAC 182-31-080, except for school employees eligible under WAC 182-30-130.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-075 Subscriber address requirements (as part of participation in school employees benefits board (SEBB) benefits).** (1) All school employees must provide their SEBB organization with their correct (~~(mailing)~~) address and (~~(provide any)~~) update(~~(s as needed in the future)~~) their address if it changes. (~~(All other)~~) A subscriber(~~(s)~~) on continuation coverage must provide the SEBB program with their correct (~~(mailing)~~) address and (~~(provide any)~~) updates to their (~~(mailing)~~) address if it changes.

(2) School employees who are appealing a decision to the school employees benefits board (SEBB) program must update their address as required in WAC 182-32-055.

#### NEW SECTION

**WAC 182-30-080 When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms?**

A school employee who is newly eligible or who regains eligibility for the employer contribution toward school employees benefits board (SEBB) benefits enrolls as described in this section.

(1) When a school employee is newly eligible for SEBB benefits:

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive SEBB medical provided the school employee is eligible to waive SEBB medical and elects to waive as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization. Their SEBB organization must receive the forms no later than thirty-one days after the school employee becomes eligible for SEBB benefits under WAC 182-31-040.

(i) The school employee may enroll in supplemental life, supplemental accidental death and dismemberment (AD&D), and supplemental long-term disability (LTD) insurance up to the guaranteed issue without evidence of insurability if the required forms are returned to the school employee's SEBB organization or contracted vendor. The school employee may apply for enrollment in supplemental life, supplemental AD&D, and supplemental 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 the school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee will automatically enroll in the premium payment plan upon enrollment in SEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new school employee must complete the required form and return it to their SEBB organization. The form must be received by their SEBB organization no later than thirty-one days after the employee becomes eligible for SEBB benefits.

(iii) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school 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 supplemental SEBB benefits, the school employee must return the required form to their SEBB organization. The form must be received by the SEBB organization no later than thirty-one days after the school employee becomes eligible for SEBB benefits.

(b) If a newly eligible school employee's SEBB organization, or the authority's contracted vendor in the case of life insurance or accidental death and dismemberment (AD&D), does not receive the school employee's required forms indicating medical, dental, vision, life insurance, AD&D insurance, and LTD insurance elections, and the school employee's tobacco use status attestation within thirty-one days of the school employee becoming eligible, their enrollment will be as follows for those elections not received within thirty-one days:



- (i) A medical plan as determined by the health care authority (HCA);
- (ii) A dental plan as determined by the HCA;
- (iii) A vision plan as determined by the HCA;
- (iv) Basic life insurance;
- (v) Basic AD&D insurance;
- (vi) Basic LTD insurance;
- (vii) Dependents will not be enrolled; and
- (viii) A tobacco use surcharge will be incurred as described in WAC 182-30-050 (1)(b).

(2) The employer contribution toward SEBB benefits coverage ends according to WAC 182-31-050.

(3) When a school employee regains eligibility for the employer contribution toward SEBB benefits coverage following a period of leave (described in WAC 182-31-100(1)). SEBB medical, dental, and vision begin the first day of the month following the school employee's return to work as the SEBB organization anticipates the school employee is eligible for the employer contribution.

(a) The school employee must complete the required forms indicating their enrollment elections, including an election to waive SEBB medical if the school employee chooses to waive SEBB medical as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization except as described in (d) of this subsection. Forms must be received by the SEBB organization, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than thirty-one days after the school employee regains eligibility:

(i) A school employee who self-paid for supplemental SEBB life insurance coverage or SEBB AD&D 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 school employee regains eligibility for the employer contribution toward SEBB benefits;

(ii) A school employee who was eligible to continue supplemental life or supplemental AD&D but discontinued that SEBB insurance coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution.

(b) A school employee does not have to return a form indicating supplemental LTD insurance elections. Their supplemental LTD insurance will be automatically reinstated effective the first day of the month they regain eligibility for the employer contribution toward SEBB benefits.

(c) If a school employee's SEBB organization, or contracted vendor accepting forms directly, does not receive the required forms within thirty-one days of the school employee's enrollment in SEBB, insurance coverage will be as described in subsection (1)(b)(i) through (v) and (vii) of this section.

(d) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these supplemental SEBB benefits, the school employee must return the required form to the contracted vendor of their SEBB organization. The contracted vendor or school employee's SEBB organization must receive the form no later

than thirty-one days after the school employee becomes eligible for SEBB benefits.

(4) If a school employee who is eligible to participate in the salary reduction plan (see WAC 182-31-060) is hired into a new position and that is anticipated to be eligible for SEBB benefits in the same year, the school employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is thirty days or less and within the current plan year. The school employee must notify the new SEBB organization of the transfer by providing the new SEBB organization the required form no later than thirty-one days after the employee's first day of work with the new SEBB organization.

(5) A school employee will have uninterrupted coverage when moving from one SEBB organization to another within the same month or a consecutive month if they are eligible for the employer contribution towards SEBB benefits in the position they are leaving and are anticipated to be eligible for the employer contribution in the new position. SEBB insurance coverage elections also remain the same when a school employee has a break in employment that does not interrupt their employer contribution toward SEBB insurance coverage.

(6) A school employee returning to the same SEBB organization who is anticipated to work at least six hundred thirty hours in the coming school year, and who was receiving the employer contribution in August of the prior school year, will receive uninterrupted coverage from one school year to the next.

#### NEW SECTION

**WAC 182-30-081 School employees benefits board (SEBB) first annual open enrollment.** (1) During the SEBB first annual open enrollment a school employee who is eligible for the employer contribution must:

(a) Complete the required forms indicating their enrollment elections, including an election to waive SEBB medical and elects to waive as described in WAC 182-31-080 (1)(b). Their SEBB organization must receive the required forms no later than the last day of the first SEBB annual open enrollment.

(b) Enroll in supplemental life, supplemental AD&D, and supplemental LTD insurance if they want to purchase up to the guaranteed issue amount without providing evidence of insurability. Their SEBB organization, or contracted vendor, must receive the forms no later than the last day of the first SEBB annual open enrollment. A school employee may apply for enrollment in supplemental life, supplemental AD&D, and supplemental LTD insurance over the guaranteed issue at any time during the calendar year by submitting the required form and providing evidence of insurability to the contracted vendor for approval.

(c) If eligible to participate in the salary reduction plan (see WAC 182-31-060), elect participation in the medical flexible spending account (FSA) or the dependent care assistance program (DCAP) if they want to participate in those SEBB benefits for the 2020 calendar year. The contracted

vendor must receive the school employee's election no later than the last day of the first SEBB annual open enrollment.

(d) Be automatically enrolled in the premium payment plan upon enrollment in SEBB medical so school employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a school employee must complete the required form and return it to their SEBB organization no later than the end of SEBB first annual open enrollment.

(e) Complete the surcharge attestation requirements in WAC 182-30-050.

(f) If the school employee wants to enroll dependents eligible under WAC 182-31-140. The school employee must follow the requirements in WAC 182-30-150(5).

(2) If a school employee's SEBB organization does not receive the self-pay subscribers required forms indicating medical, dental, vision, life insurance, and LTD insurance elections, and the school employee's tobacco use status attestation by the end of open enrollment, their enrollment will be as follows for those elections not received:

(a) A medical plan as determined by the health care authority (HCA);

(b) A dental plan as determined by the HCA;

(c) A vision plan as determined by the HCA;

(d) Basic life insurance;

(e) Basic AD&D insurance;

(f) Basic LTD insurance;

(g) Dependents will not be enrolled; and

(h) A tobacco use surcharge will be incurred as described in WAC 182-30-050 (1)(b).

#### NEW SECTION

**WAC 182-30-085 What happens if my health plan becomes unavailable due to a change in contracted service area or eligibility for medicare?** (1) A subscriber must select a new health plan during the school employees benefits board (SEBB) annual open enrollment period when their previously selected health plan becomes unavailable due to a change in contracting service area. The required forms must be received no later than the last day of the annual open enrollment.

(a) A school employee must submit the required form to their SEBB organization electing their new health plan.

(b) A subscriber on continuation coverage must submit the required forms to the SEBB program electing their new health plan.

(c) The effective date of the change in their health plan will be January 1st of the following year.

(2) A subscriber who fails to elect a new health plan within the required time period as required in subsection (1) of this section will be enrolled in a health plan designated by the director or their designee.

(3) A subscriber must elect a new health plan when their previously selected health plan becomes unavailable due to the subscriber or subscriber's dependent ceasing to be eligible for their current health plan because of enrollment in medicare. The required forms must be received no later than sixty days after the date the health plan becomes unavailable.

(a) A school employee must submit the required forms to their employing agency electing their new health plan.

(b) A subscriber on continuation coverage must submit the required forms to the SEBB program electing their new health plan.

(c) The effective date of the change in their health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in the health plan begins on that day.

(4) A subscriber who fails to elect a new health plan within the required time period as required in subsection (3) of this section who is enrolled in a high deductible health plan (HDHP) with a health savings account (HSA), will not be eligible to receive contributions to the HSA, and will be liable for any tax penalties resulting from contributions made when they are no longer eligible.

(5) A subscriber enrolled in a health plan as described in subsection (2) or (4) of this section may not change health plans except as allowed in WAC 182-30-090.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-090 When may a subscriber change health plans?** A subscriber(§) may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber(§) may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. ~~((All other))~~ A subscriber(§) on continuation coverage submits the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber(§) may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for SEBB benefits. 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. The forms must be received no later than sixty days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. ~~((All other))~~ A subscriber(§) on continuation coverage submits the enrollment forms to the SEBB program. In addition to the required forms, a subscriber(§) must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the ~~((latter))~~ 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 state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

**(Exception:)** ((For the purposes of) As used in (d) of this subsection 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 subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan, otherwise there will be limited network providers and covered services;

**Exception:** A dental plan is considered available if a provider is available within 50 miles of the new address.

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent 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 SEBB health plan coverage from medicaid or CHIP;

(i) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(j) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment 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 SEBB program determines that a continuity of care issue exists. The SEBB 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~~);

(ii) Treatment following a recent organ transplant (~~within the last twelve months~~);

(iii) A scheduled surgery (~~within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care)~~);

(iv) Recent major surgery still within the postoperative period (~~of up to eight weeks~~); or

(v) (~~Third trimester of~~) Treatment for a high-risk pregnancy.

(3) If the school employee is having premiums taken from payroll on a pretax basis, a health 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 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-100** When may a ((subscriber)) school employee enroll or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)? A ((subscriber)) school employee who is eligible to participate in the salary reduction plan as described in WAC 182-31-060 may enroll, or revoke their election and make a new 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 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible ((subscriber)) school employee may elect to enroll in or opt out of ((their)) participation under the premium payment plan during the annual open enrollment (~~school employees submit~~) by submitting the required form to their school employees benefits board (SEBB) organization (~~all other subscribers submit the form to the health care authority (HCA)~~). An eligible ((subscriber)) school employee may elect to enroll or reenroll in the medical FSA, DCAP, or both during the annual open enrollment by submitting the required forms to their SEBB organization, the HCA or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

**Note:** ((Subscribers)) School employees enrolled in a ((consumer-directed)) high deductible health plan ((CDHP)) (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. ((Subscribers)) School employees who elect both will only be enrolled in the ((CDHP)) HDHP with a HSA.

(3) **During a special open enrollment:** A ~~((subscriber))~~ school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, 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 school employee must submit the required form~~(s)~~ to their SEBB organization~~(; all other subscribers must submit the required forms to HCA)~~. The SEBB organization ~~((or HCA))~~ must receive the required form and evidence of the event that created the special open enrollment no later than sixty days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A ~~((subscriber))~~ school employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the ~~((latter))~~ 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) ~~((Subscriber))~~ School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the ~~((subscriber))~~ school employee;
- Birth, adoption, or when the ~~((subscriber))~~ school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) ~~((Subscriber's))~~ School employee's dependent no longer meets SEBB eligibility criteria because:

- ~~((Subscriber))~~ School employee has a change in marital status;
- ~~((Subscriber's))~~ School 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) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) ~~((Subscriber))~~ School employee has a change in employment status that affects the ~~((subscriber's))~~ school employee's eligibility for their employer contribution toward their ~~((employer's))~~ employer-based group health plan;

(v) The ~~((subscriber's))~~ school employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution toward their 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) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school 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 SEBB annual open enrollment;

(vii) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school employee's dependent has a change in residence that affects health plan availability;

(viii) ~~((Subscriber's))~~ School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States, and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the ~~((subscriber))~~ school employee or any other individual to provide insurance coverage for an eligible dependent of the ~~((subscriber))~~ school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the ~~((subscriber))~~ school employee or a ~~((subscriber's))~~ school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school employee's dependent becomes entitled to coverage under medicare or the ~~((subscriber))~~ school employee or a ~~((subscriber's))~~ school employee's dependent loses eligibility for coverage under medicare;

(xiii) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school employee's dependent's current health plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the ~~((subscriber))~~ school employee or a ~~((subscriber's))~~ school employee's dependent is no longer eligible for a HSA;

(xiv) ~~((Subscriber))~~ School employee or a ~~((subscriber's))~~ school employee's dependent experiences a disrupt-

tion of care for active and ongoing treatment, that could function as a reduction in benefits for the ((subscriber)) school employee or a ((subscriber's)) school employee's dependent ((for a specific condition or ongoing course of treatment)). The ((subscriber)) school employee may not change their health plan election if the ((subscriber's)) school employee's or dependent's physician stops participation with the ((subscriber's)) school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB 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));
- Treatment following a recent organ transplant ((within the last twelve months));
- A scheduled surgery ((within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care)));
- Recent major surgery still within the postoperative period ((of up to eight weeks)); or
- ((Third trimester of)) Treatment for a high-risk pregnancy.

(xv) ((Subscriber or a subscriber's)) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

If the subscriber 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 FSA.** A ((subscriber)) school employee may enroll or revoke their election and make a new 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 new election will be effective the first day of the month following the ((latter)) later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization ((or the HCA)). 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) ((Subscriber)) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership ((if the state registered domestic partner qualifies as)) when the dependent is a tax dependent of the ((subscriber)) school employee;
- Birth, adoption, or when the ((subscriber)) school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) ((Subscriber's)) School employee's dependent no longer meets SEBB ((subscriber or)) eligibility criteria because:

- School employee has a change in marital status;
- ((Subscriber's)) School 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) ((Subscriber)) School employee or a ((subscriber's)) school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) ((Subscriber)) School employee or a ((subscriber's)) school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the medical FSA;

(v) A court order requires the ((subscriber)) school employee or any other individual to provide insurance coverage for an eligible dependent of the ((subscriber)) school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) ((Subscriber)) School employee or a ((subscriber's)) school employee's dependent becomes entitled to coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) ((Subscriber)) School employee or a ((subscriber's)) school employee's dependent becomes entitled to coverage under medicare.

(c) **DCAP.** A ((subscriber)) school employee may enroll or revoke their election and make a new 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 new election will be effective the first day of the month following the ((latter)) later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization ((or the HCA)). 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) ((Subscriber)) School employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the state registered domestic partner qualifies as a tax dependent of the ((subscriber)) school employee;
- Birth, adoption, or when the ((subscriber)) school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) ((Subscriber)) School employee or a ((subscriber's)) school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) (~~Subscriber or a subscriber's~~) School employee or school 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 SEBB annual open enrollment;

(iv) (~~Subscriber~~) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) (~~Subscriber or a subscriber's~~) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) (~~Subscriber~~) School employee's dependent care provider imposes a change in the cost of dependent care; (~~subscriber~~) school employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the (~~subscriber~~) school employee as defined in IRC 26 U.S.C. Sec. 152.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-30-120 Advertising or promotion of school employees benefits board (SEBB) benefit plans.** (1) In order to assure equal and unbiased representation of school employees benefits board (SEBB) benefits, contracted vendors must comply with all of the following:

(a) All materials describing SEBB benefits must be prepared by or approved by the health care authority (HCA) before use.

(b) Distribution or mailing of all benefit descriptions must be performed by or under the direction of the HCA.

(c) All media announcements or advertising by a contracted vendor which includes any mention of the "school employees benefits board," "SEBB," "health care authority," "HCA," any reference to benefits for "school employees," or any group of enrollees covered by SEBB benefits, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a SEBB contracted vendor or subcontractor may result in contract termination by the (~~authority~~) HCA, refusal to continue or renew a contract with the noncomplying party, or both.

NEW SECTION

**WAC 182-30-130 What are the requirements for a school employees benefits board (SEBB) organization engaging in local negotiations regarding SEBB benefits eligibility criteria?** This section describes the terms and conditions for a school employees benefits board (SEBB) organization that is engaging in local negotiations regarding eligibility for school employees as described in RCW 41.05.740 (6)(e).

(1) A SEBB organization must provide a current ratified collective bargaining agreement (CBA) and information on all eligible school employees under the CBA to the health care authority (HCA) by the start of the school year.

(2) A SEBB organization must offer all of, and only, the following SEBB benefits to employees and their dependents:

- (a) Medical (includes the wellness incentive);
- (b) Dental;
- (c) Vision;
- (d) Basic life;
- (e) Basic accidental death and dismemberment (AD&D) insurance.

(3) A SEBB organization must provide an employer contribution as described below:

(a) The subscriber-only employer medical contribution (EMC) amount for school employees eligible under RCW 41.05.740 (6)(d) multiplied by the premium tier ratio associated with the enrollment tier selected by the school employee;

(b) One hundred percent of the cost for the school employee dental plan multiplied by the enrollment tier selected by the school employee;

(c) One hundred percent of the cost for the school employee vision plan multiplied by the enrollment tier selected by the school employee;

(d) One hundred percent of the cost for basic life and accidental death and dismemberment (AD&D) insurance;

(e) One hundred percent of the cost of the administrative fee charged by the HCA; and

(f) One hundred percent of the monthly K-12 remittance for deposit in the retired school employees' subsidy account.

(4) A SEBB organization providing SEBB benefits as described in this section may do so by group as described in (a) through (d) of this subsection:

(a) The entire SEBB organization;

(b) A entire collective bargaining unit;

(c) A group containing all nonrepresented school employees; or

(d) A combination of (b) and (c) of this subsection.

(5) A SEBB organization must establish a threshold of anticipated work hours no less than one hundred eighty hours and no more than the minimum hours to meet SEBB eligibility under WAC 182-31-040 within a school year.

(6) All of the rules in chapters 182-30, 182-31, and 182-32 WAC apply, except for all rules governing SEBB benefits that are not available to school employees whose eligibility is established under this section. The following benefits are not available to school employees whose eligibility is established under this section:

(a) Long-term disability (LTD);

(b) Medical flexible spending arrangement (FSA);

(c) Dependent care assistance program (DCAP); and

(d) Supplemental life insurance.

(7) If a school employee waives medical under this section, there is no requirement to send the employer contribution to the HCA as required in WAC 182-30-070(4).

(8) Eligibility determinations must align with the SEBB program's status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the SEBB organization may only consider school 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.

(9) A SEBB organization providing SEBB benefits to a group of school employees under this section must notify the SEBB program each time the CBA is renegotiated.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-010 Purpose.** The purpose of this chapter is to establish school employees benefits board (SEBB) eligibility criteria for and the effective date of enrollment in SEBB approved benefits. The rules within this chapter are applicable for school employees eligible for SEBB benefits under RCW 41.05.740(6)((d)(i)). This chapter does not address where a SEBB organization has locally negotiated to offer SEBB benefits to school employees who are anticipated to work less than six hundred thirty hours in a school year as authorized in RCW 41.05.740 (6)(e)).

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-020 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means ~~((a once yearly))~~ an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, or enroll in coverage, or waive enrollment in SEBB medical. School employees ~~((participating))~~ eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), ~~((and))~~ or the medical flexible spending arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of health plan coverage available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB ~~((board))~~ policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of

SEBB benefits. The term "contracted vendor" includes sub-contractors 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 SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

~~((Disability insurance includes any basic long term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long term disability or supplemental short term disability paid for by the employee.))~~

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items. ~~((Documents include evidence needed to verify eligibility for SEBB benefits and complete the enrollment process.))~~

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC ~~((182-31-060))~~ 182-30-130 and 182-31-040.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in school employees benefits board (SEBB) benefits, and for whom applicable premium payments have been made.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the ~~((school employees benefits board))~~ SEBB and provided by a contracted vendor or self-insured plans administered by the HCA.

"Layoff," for purposes of this chapter, means a change in employment status due to a SEBB organization lack of funds or a SEBB organization's organizational change.

"Life insurance" ~~((for eligible school employees includes any))~~ means basic life insurance ~~((and accidental death and dismemberment (AD&D) insurance))~~ paid for by ~~((the school employees benefits board (SEBB)))~~ SEBB organization, as well as supplemental life insurance ~~((and supplemental AD&D insurance))~~ offered to and paid for by school employees for themselves and their dependents.

"LTD insurance" or "long-term disability insurance" ~~((includes))~~ means any basic long-term disability insurance paid for by the ~~((school employees benefits board~~

ƒ) SEBB(†) organization and ((any)) supplemental long-term disability insurance offered to and paid for by the school employee.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under ((this)) chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code. ((Chapter 41.05 RCW))

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Public employees benefits board" or "PEBB" means the board established under RCW 41.05.055.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pre-tax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts((, educational service districts,)) and charter schools established under chapter 28A.710 RCW;
- Represented employees of educational service districts; and
- Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board established in RCW 41.05.740.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, ((†)) accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) and eligible dependents (as described in WAC 182-31-140).

"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, school employees may enroll in or waive enrollment in SEBB medical. School employees eligible to participate in the salary reductions plan may enroll in or revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance, accidental death and dismemberment (AD&D) insurance coverage, or long-term disability coverage purchased by the school employee in addition to the coverage provided by the school employees benefits board (SEBB) organization.

"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.

"Waive" means an eligible school employee affirmatively declining enrollment in a SEBB health plan because the school employee is enrolled in other employer-based group medical, TRICARE plans, or medicare as allowed under WAC 182-31-080.

"Week" means a seven-day period starting on Sunday and ending on Saturday.



AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-030 What are the obligations of a school employees benefits board (SEBB) organization in the application of school employee eligibility?** (1) All school employees benefits board (SEBB) organizations must carry out all actions, policies, and guidance issued by the SEBB program which are necessary for the operation of benefit plans, education ~~((about benefits for))~~ of school employees, claims administration, and appeals ~~((processing))~~ process including those described in chapters 182-30, 182-31, and 182-32 WAC. SEBB organizations must:

(a) Use the methods provided by the SEBB program to determine eligibility and enrollment in benefits;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the SEBB program;

(c) Support SEBB program auditing of eligibility and enrollment decisions as needed; and

(d) Carry out corrective action and pay any penalties imposed by the health care authority (HCA) and established by the SEBB when the SEBB organization's eligibility determinations fail to comply with the criteria under these rules.

(2) SEBB organizations must determine school employee ~~((and their dependents))~~ eligibility for SEBB benefits and the employer contribution according to the criteria in WAC 182-31-040 and 182-31-050. SEBB organizations must:

(a) Notify newly hired school employees of SEBB program rules and guidance for eligibility and appeal rights;

(b) Inform a school employee in writing whether or not they are eligible for SEBB benefits upon employment. The written communication must include information about the school employee's right to appeal eligibility and enrollment decisions;

(c) Routinely monitor all school employees work hours to establish eligibility and maintain the employer contribution toward SEBB ~~((insurance))~~ benefits coverage;

(d) Identify when a previously ineligible school employee becomes eligible or a previously eligible school employee loses eligibility; and

(e) Inform a school employee in writing whether or not they are eligible for benefits and the employer contribution whenever there is a change in work patterns such that the school employee's eligibility status changes. ~~((At the same time))~~ Whenever this occurs, SEBB organizations must inform the school employee~~((s))~~ of the right to appeal eligibility and enrollment decisions.

(3) SEBB organizations must determine school employee's dependents eligibility for SEBB benefits according to the criteria in WAC 182-31-140.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-040 How do school employees establish eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and when ~~((does))~~ do SEBB ~~((insurance))~~ benefits coverage begin?**

(1) Eligibility shall be determined solely by the criteria that

most closely describes the school employee's work circumstance.

~~((2))~~ ~~((All hours worked by an employee in their capacity as a school employee must be included in the calculation of hours for determining eligibility.~~

~~((3))~~ School employee eligibility criteria:

(a) A school employee is eligible for the employer contribution towards school employees benefits board (SEBB) benefits if they are anticipated to work at least six hundred thirty hours per school year. The eligibility effective date for a school employee eligible under this subsection shall be determined as follows:

(i) If the school employee's first day of work is on or after September 1st but not later than the first day of school for the current school year as established by the SEBB organization, they are eligible for the employer contribution on the first day of work; or

(ii) If the school employee's first day of work is at any other time during the school year, they are eligible for the employer contribution on that day.

(b) A school employee who is not anticipated to work at least six hundred thirty hours ~~((per))~~ in the school year becomes eligible for the employer contribution towards SEBB benefits on the date their work pattern is revised in such a way that they are now anticipated to work six hundred thirty hours in the school year.

(c) A school employee who is not anticipated to work at least six hundred thirty hours in the school year becomes eligible for the employer contribution towards SEBB benefits on the date they actually worked six hundred thirty hours in the school year.

~~((d))~~ A school employee ~~((may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization.~~

~~((4))~~ who is not anticipated to work six hundred thirty hours within the school year because of the time of year they are hired but is anticipated to work at least six hundred thirty hours the next school year, establishes eligibility for the employer contribution toward SEBB benefits as of their first working day if they are:

(i) A nine to ten month school employee anticipated to be compensated for at least seventeen and one-half hours a week in six of the last eight weeks counting backwards from the week that contains the last day of school; or

(ii) A twelve month school employee anticipated to be compensated for at least seventeen and one-half hours a week in six of the last eight weeks counting backwards from the week that contains August 31st, the last day of the school year.

(3) All hours worked by an employee in their capacity as a school employee must be included in the calculation of hours for determining eligibility.

(4) A school employee may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization. A school employee may not gain eligibility by stacking of hours from multiple SEBB organizations.

(5) A school employee is presumed eligible for the employer contribution at the start of the school year, as described in subsection (2)(a) of this section, if they:

(a) Worked at least six hundred thirty hours in each of previous two school years; and

(b) Are returning to the same type of position (teacher, paraeducator, food service worker, custodian, etc.) or combination of positions with the same SEBB organization.

Note: A SEBB organization rebuts this presumption by notifying the school employee, in writing, of the specific reasons why the school employee is not anticipated to work at least six hundred thirty hours in the current school year and how to appeal the eligibility determination.

(6) When SEBB (~~(insurance coverage)~~) benefits begin(~~(s)~~):

(a) For a school employee who establishes eligibility under subsection (~~((3))~~) (2)(a)(i) of this section SEBB (~~(insurance coverage)~~) benefits begin(~~(s)~~) on the first day of work for the new school year.

(b) For a school employee who establishes eligibility under subsection (~~((3))~~) (2)(a)(ii), (b), (~~(e)~~) (c), or (d) of this section, SEBB insurance coverage begins on the first day of the month following the date the school employee becomes eligible for the employer contribution towards SEBB benefits.

(7) If the school employee is not eligible under subsections (1) through (5) of this section, they may be eligible for SEBB benefits if their SEBB organization is engaging in local negotiations regarding eligibility for school employees as described in WAC 182-30-130.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-050 When does eligibility for the employer contribution for school employees benefits board (SEBB) benefits end?** (1) The employer contribution toward school employees benefits board (SEBB) benefits ends the last day of the month in which the school year ends. The employer contribution toward SEBB benefits will end earlier than the end of the school year if one of the following occurs:

(a) The SEBB organization terminates the employment relationship. In this case, eligibility for the employer contribution ends the last day of the month in which the employer-initiated termination notice is effective;

(b) The school employee terminates the employment relationship. In this case, eligibility for the employer contribution ends the last day of the month in which the school employee's resignation is effective; or

(c) The school employee's work pattern is revised such that the school employee is no longer anticipated to work six hundred thirty hours during the school year. In this case, eligibility for the employer contribution ends as of the last day of the month in which the change is effective.

(2) If the SEBB organization deducted the school employee's portion of the premium for SEBB (~~(insurance coverage)~~) benefits from their pay after the school employee was no longer eligible for the employer contribution, SEBB (~~(insurance coverage)~~) benefits end(~~(s)~~) the last day of the month for which school employee premiums were deducted.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-060 Who is eligible to participate in the salary reduction plan?** School employees eligible for the employer contribution toward school employees benefits board (SEBB) benefits are eligible to participate in the premium payment plan under the state's salary reduction plan (~~(provided they are)~~). School employees eligible for (~~(school employees benefits board (SEBB))~~) SEBB(~~(s)~~) benefits as described in WAC 182-31-040 (~~(and they)~~) may also elect to participate in the medical FSA or DCAP programs provided they elect participation within the time frames described in WAC 182-30-100.

#### NEW SECTION

**WAC 182-31-070 Is dual enrollment in school employees benefits board (SEBB) prohibited?** School employees benefits board (SEBB) health plan coverage is limited to a single enrollment per individual.

(1) An individual who has more than one source of eligibility for enrollment in SEBB health plan coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible school employee may waive SEBB medical and enroll as a dependent under the health plan of their spouse, state registered domestic partner, or parent as described in WAC 182-31-080.

(3) A dependent enrolled in a SEBB health plan who becomes eligible for SEBB benefits as a school employee must elect to enroll in SEBB benefits as described in WAC 182-30-080(1). This includes making an election to enroll in or waive enrollment in SEBB medical as described in WAC 182-31-080 (1)(a).

(a) If the school employee does not waive enrollment in SEBB medical, the school employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent. If the school employee's spouse, state registered domestic partner, or parent does not remove the school employee (who is enrolled as a dependent) from their subscriber account, the SEBB program will terminate the school employee's enrollment as a dependent the last day of the month before the school employee's enrollment in SEBB benefits begins as described in WAC 182-31-040.

Exception: An enrolled dependent who becomes newly eligible, at the start of the school year, for SEBB benefits as a school employee could be dual-enrolled in SEBB coverage for one month. This exception is only allowed for the first month the dependent is enrolled as a school employee.

(b) If the school employee elects to waive their enrollment in SEBB medical, the school employee will remain enrolled in SEBB medical under their spouse's, state registered domestic partner's, or parent's SEBB health plan as a dependent.

(4) A child who is eligible for medical, dental, and vision under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

(5) When a school employee is eligible for the employer contribution towards SEBB benefits due to employment in

more than one SEBB organization the following provisions apply:

(a) When a school employee is eligible for the employer contribution during a school year under WAC 182-31-040 and 182-30-130 the SEBB organization that has determined the school employee eligible under WAC 182-31-040 must make the employer contribution;

(b) If the school employee is eligible for the employer contribution under WAC 182-31-040 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(c) If the school employee is eligible for the employer contribution under WAC 182-30-130 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(d) If the school employee loses eligibility under one SEBB organization they may choose to enroll in the other SEBB organization they were eligible for the employer contribution at. The school employee must notify their other SEBB organization they were eligible for the employer contribution at no later than sixty days from the date of loss of the first SEBB coverage in order to transfer coverage;

(e) The school employee's elections remain the same when a school employee transfers their enrollment under one SEBB organization to another SEBB organization without a break in SEBB benefits for one month or more, as described in (d) of this subsection.

#### NEW SECTION

**WAC 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment?** A school employee may waive enrollment in school employees benefits board (SEBB) medical if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. A special open enrollment event must be an event other than a school employee gaining initial eligibility for SEBB benefits. A school employee who waives enrollment in SEBB medical must enroll in dental, vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, and basic long-term disability insurance.

(1) To waive enrollment in SEBB medical, the school employee must submit the required form to their SEBB organization at one of the following times:

(a) **When the school employee becomes eligible:** A school employee may waive SEBB medical when they become eligible for SEBB benefits. The school employee must indicate their election to waive enrollment in SEBB medical on the required form and submit the form to their SEBB organization. The SEBB organization must receive the form no later than thirty-one days after the date the school employee becomes eligible for benefits (see WAC 182-30-080). SEBB medical will be waived as of the date the school employee becomes eligible for SEBB benefits.

(b) **During the annual open enrollment:** A school employee may waive SEBB medical during the annual open enrollment. The required form must be received by the school

employee's SEBB organization before the end of the annual open enrollment. SEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** A school employee may waive SEBB medical during a special open enrollment as described in subsection (4) of this section. The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to their SEBB organization. SEBB 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, SEBB 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, SEBB medical will be waived the last day of the previous month.

(2) If a school employee waives SEBB medical, the school employee may not enroll dependents in SEBB medical.

(3) Once SEBB medical is waived, the school employee is only allowed to enroll in SEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows a school employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs. The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to the SEBB organization. SEBB 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, SEBB medical will begin for a school employee on the first day of the month in which the event occurs (see WAC 182-31-150(3)) for the SEBB medical effective date of a newly born child, newly adopted child, spouse, or state-registered domestic partner).

(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 school employee, the school employee's dependent, or both.

- (a) School employee acquires a new dependent due to:
- (i) Marriage or registering for a state domestic partnership;
- (ii) Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- (iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.
- (b) School employee or a school 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) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group medical;
- (d) The school employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group medical;
- Note: As used in (d) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.
- (e) School employee or a school 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 SEBB program's annual open enrollment;
- (f) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence results in the dependent losing their health insurance;
- (g) A court order requires the school employee or any other individual to provide a health plan for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);
- (h) School employee or a school employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;
- (i) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);
- (j) School employee or a school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;
- (k) School employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-090 When is an enrollee eligible to continue school employees benefits board (SEBB) (~~health plan coverage~~) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA) (~~and where may~~**

~~school employee survivors go for additional coverage options)?~~ (1) ~~((An enrollee))~~ A school employee or a school employee's dependent who loses eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for all or any combination of medical, dental, or vision.

(2) A school employee or a school employee's dependent may continue ((school employees benefits board (SEBB)) health plan coverage under ((the federal Consolidated Omnibus Budget Reconciliation Act (COBRA)) by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

**Note:** Based on RCW 26.60.015 and SEBB policy resolution SEBB 2018-01 a ~~((school employee's))~~ subscriber's state registered domestic partner and the state registered domestic partner's children may continue SEBB ~~((insurance coverage))~~ benefits on the same terms and conditions as a legal spouse or child under COBRA.

(a) ~~The ((enrollee's))~~ election must be received by the SEBB program no later than sixty days from the date the ~~((enrollee's))~~ school employee's or school employee's dependent's SEBB health plan coverage ended or from the postmark date on the election notice sent by the SEBB program, whichever is later;

(b) ~~The ((enrollee's))~~ first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than forty-five days after the election period ends as described in (a) of this subsection. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-30-040;

(c) ~~((Enrollees who request to voluntarily terminate their COBRA coverage must do so in writing. The written termination request must be received by the SEBB program.))~~ COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to re-enroll in COBRA coverage unless they regain eligibility as described in WAC 182-31-040. Those who request to terminate their COBRA coverage must do so in writing. COBRA coverage will end on the last day of the month in which the SEBB program receives the termination request or on the last day of the month specified in the enrollee's termination request, whichever is later. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month; ~~((and))~~

(d) A school employee enrolled in a 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.)) and the school employee's dependents will have an opportunity to continue making contributions to their medical FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec. 300bb-3, the school employee's medical FSA has a greater amount in remaining benefits than remaining contribution payments for the current year. The election must be received by the contracted vendor no later than sixty days from the date the SEBB health plan coverage ended or from the postmark date on the election

~~notice sent by the contracted vendor, whichever is later. The ((enrollee's)) first premium payment under COBRA coverage is due to the contracted vendor no later than forty-five days after the election period ends as described ((below)) above. ((The enrollee's election must be received by the contracted vendor no later than sixty days from the date the enrollee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later.~~

~~(2) A school employee or a school employee's dependent who loses eligibility for the employer contribution toward SEBB insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.~~

~~(3) A school employee or a school employee's dependent who loses eligibility for continuation coverage described in WAC 182-31-110 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.~~

~~(4) A school employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible school employee may be eligible to enroll or defer enrollment as a survivor under PEBS retiree insurance coverage as described in WAC 182-12-265.)~~

~~(3) Medical, dental, and vision coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for the employer contribution as described in WAC 182-31-050.~~

#### NEW SECTION

**WAC 182-31-091 School employees benefits boards (SEBB) continuation coverage for school employees and their dependents who are not eligible for SEBB benefits as of January 1, 2020, and for dependents who were already on a SEBB organization's continuation coverage as of December 31, 2019?** School employees and their dependents may gain temporary eligibility for school employees benefits board (SEBB) benefits, on a self-pay basis, if they meet the following criteria:

(1) Based on policy resolution SEBB resolution 2019-06 a school employee and their dependents who are enrolled in medical, dental, or vision under a group plan offered by a SEBB organization on December 31, 2019, who lose eligibility because the school employee is not eligible under WAC 182-31-040, may elect to enroll in one or more of the following SEBB benefits: Medical, dental, or vision coverage. These benefits will be provided for a maximum of eighteen months.

(2) Based on SEBB resolution 2018-56 a dependent of a SEBB eligible school employee who is enrolled in medical, dental, or vision under a school employee's account on December 31, 2019, who loses eligibility because they are not an eligible dependent under WAC 182-31-140 may enroll in medical, dental, and vision for a maximum of thirty-six months.

(3) Based on policy resolution SEBB resolution 2019-07 a dependent of a school employee who is continuing medical, dental, or vision coverage through a SEBB organization on December 31, 2019, may elect to finish out their remaining

months, up to the maximum number of months authorized by Consolidated Omnibus Budget Reconciliation Act (COBRA) for a similar event, by enrolling in a medical, dental, or vision plan offered through the SEBB program.

(4) The school employee's or the dependent's election must be received by the SEBB program no later than sixty days after January 1, 2020. If the school employee's or a dependent's monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, the school employee's SEBB benefits will be terminated retroactive to the last day of or the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(b).

#### NEW SECTION

**WAC 182-31-100 What options for continuation coverage are available to school employees and their dependents during certain types of leave or when employment ends due to a layoff?** School employees who have established eligibility for school employees benefits board (SEBB) benefits as described in WAC 182-31-040 may continue coverage for themselves and their dependents during certain types of leave or when their employment ends due to a layoff.

(1) School employees who are no longer eligible for the employer contribution toward SEBB benefits due to an event described in (b)(i) through (v) of this subsection may continue SEBB benefits by self-paying the premium and applicable premium surcharges set by the health care authority (HCA) from the date eligibility for the employer contribution is lost:

(a) School employees may continue any combination of medical, dental, vision, life insurance, and accidental death and dismemberment (AD&D) insurance;

(b) School employees in the following circumstances who lose their eligibility for the employer contribution toward SEBB benefits qualify to continue coverage under this subsection:

(i) School employees who are on authorized leave without pay;

(ii) School employees who are receiving time-loss benefits under workers' compensation;

(iii) School employees who are called to active duty in the uniformed services as defined under USERRA;

(iv) School employees whose employment ends due to a layoff as defined in WAC 182-31-020; and

(v) School employees who are applying for disability retirement.

(c) The school employee's elections must be received by the SEBB program no later than sixty days from the date the school employee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the SEBB program, whichever is later;

(d) School employees may self-pay for a maximum of twenty-nine months. The school employee's first premium payment and applicable premium surcharges are due no later than forty-five days after the election ends as described in (c) of this subsection. Premiums and applicable premium surcharges associated with continuing SEBB medical, must be made to the HCA as well as premiums associated with con-

tinuing SEBB dental and vision insurance coverage. Premiums associated with continuing life insurance coverage or AD&D insurance coverage must be made to the contracted vendor. Following the school employee's first premium payment, the school employee must pay the premium amounts for SEBB benefits and applicable premium surcharges as premiums become due; and

(e) If the school employee's monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, the school employee's SEBB benefits will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(b).

(2) The number of months that school 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). School employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who have not used the maximum number of months allowed under COBRA coverage may continue medical, dental, vision, or any combination of them for the remaining difference in months by self-paying the premium and applicable premium surcharges as described in WAC 182-31-090.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-110 What options are available if a school employee is approved for the federal Family and Medical Leave Act (FMLA) or the paid family and medical leave program?** (1) A school employee on approved leave under the federal Family and Medical Leave Act (FMLA) or the family and medical leave insurance program under chapter 50A.04 RCW (paid family and medical leave program) may continue to receive the employer contribution toward school employees benefits board (SEBB) insurance coverage in accordance with the federal FMLA or RCW 50A.04.245. The school employee may also continue current supplemental life, supplemental accidental death and dismemberment (AD&D), and supplemental long-term disability insurance. The school employee's SEBB organization is responsible for determining if the school employee is eligible for leave under FMLA and the duration of such leave. The employment security department is responsible for determining if the school employee is eligible for leave under the paid family and medical leave program.

(2) If a school employee's monthly premium or ~~((any))~~ applicable premium~~(s))~~ surcharges remain~~(s))~~ unpaid for sixty days from the original due date, the school employee's SEBB ~~((insurance coverage))~~ benefits will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges ~~((was))~~ were paid.

(3) If a school employee exhausts the period of leave approved under FMLA or paid family and medical leave, SEBB ~~((insurance coverage))~~ benefits may be continued by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution

from the SEBB organization, as described in WAC 182-31-100(1).

#### NEW SECTION

**WAC 182-31-120 What options for continuation coverage are available to school employees during their appeal of a grievance?** (1) A school employee awaiting hearing of a grievance action before any of the following may continue their school employees benefits board (SEBB) insurance coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the SEBB organization, on the same terms as a school employee who is granted leave as described in WAC 182-31-100(1):

(a) An arbitrator; or

(b) A grievance or appeals committee established under a collective bargaining agreement for union represented employees.

(2) The school employee must pay premium amounts and applicable premium surcharges associated with SEBB benefits as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, SEBB benefits will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(b).

(3) If the dismissal is upheld, all SEBB benefits 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 school employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the school employee may continue medical, dental, vision, or any combination of them for the remaining months available under COBRA. See WAC 182-31-090 for information on COBRA. The number of months the school employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(5) If the arbitrator, committee, or court sustains the school employee in the appeal and directs reinstatement of SEBB organization paid SEBB benefits retroactively, the SEBB organization must forward to HCA the full employer contribution for the period directed by the arbitrator, committee, or court and collect from the school employee the school employee's share of premiums due, if any.

(a) When the employer contribution is reinstated, HCA will refund premiums and applicable premium surcharges the school employee paid only if the school employee retroactively pays their employee contribution amounts for SEBB benefits. In the alternative, at the request of the school employee, HCA may deduct the school employee's contribution amount for SEBB insurance coverage from the refund of premiums and applicable premium surcharges self-paid by the school employee during the appeal period.

(b) All supplemental life insurance, supplemental accidental death and dismemberment (AD&D) that was in force at the time of dismissal shall be reinstated retroactively only

if the school employee makes retroactive payment of premium for any such supplemental coverage that was not continued by self-payment during the appeal process. If the school employee chooses not to pay the retroactive premium, evidence of insurability will be required to restore such supplemental coverage.

#### NEW SECTION

**WAC 182-31-130 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-31-140 or 182-30-130?** If eligible, dependents may continue SEBB benefits 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 school employees benefits board (SEBB) organization, following their loss of eligibility under the subscriber's SEBB benefits. The dependent's first premium payment and applicable premium surcharges are due to the HCA no later than forty-five days after the dependent's election is received by the SEBB program. Following the dependent's first premium payment, the dependent must pay premium and applicable premium surcharge amounts associated with SEBB benefits as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, SEBB benefits will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(b). The SEBB program must receive the required forms as outlined in the SEBB initial notice of COBRA and continuation coverage rights. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Dependents who lose eligibility due to the death of an employee may be eligible to continue health plan enrollment as described in WAC 182-12-180 or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria as described in WAC 182-31-140 are eligible to continue SEBB benefits enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-31-090 for more information on COBRA.

(3) No continuation coverage will be offered unless the SEBB program is notified through hand delivery or United States Postal Service mail of the qualifying event as outlined in the SEBB initial notice of COBRA and continuation coverage rights.

#### NEW SECTION

**WAC 182-31-135 Where may school employee survivors go for additional coverage options?** A school employee's spouse, state registered domestic partner, or child who loses eligibility for the employer contribution toward school employees benefits board (SEBB) insurance benefits due to the death of an eligible school employee may be eligible to enroll in or defer enrollment as a survivor under public employees benefits board (PEBB) retiree insurance coverage

as described in WAC 182-12-265 rather than enrolling in continuation coverage.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-140 Who are eligible dependents?** To be enrolled in ~~((a health plan))~~ SEBB benefits, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-31-150.

The school employees benefits board (SEBB) program ~~((will verify))~~ verifies the eligibility of all ~~((self-pay subscriber))~~ dependents and will request documents from subscribers that provide evidence of a dependent's eligibility. The SEBB program reserves the right to review a dependent's eligibility at any time. ~~((All SEBB organizations will verify the eligibility of all school employee dependents and will request documents that provide evidence of))~~ The SEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the SEBB program is unable to verify a dependent's eligibility. The SEBB program and SEBB organizations will not enroll dependents into ~~((a health plan))~~ SEBB benefits if they are unable to verify a dependent's eligibility within the SEBB program enrollment timelines.

~~((A self-pay))~~ The subscriber must ((notify the SEBB program)) provide notice, in writing, when their dependent is not eligible under this section. ((A school employee must notify their SEBB organization, in writing, when their dependent is not eligible under this section. The notification must be received no later than sixty days after the date their dependent is no longer eligible under this section. See WAC 182-31-150(2) for the consequences of not removing an ineligible dependent from SEBB insurance coverage)) as described in WAC 182-31-150 (2)(a). A school employee must notify their SEBB organization, except as required in subsection (3)(h)(ii) of this section. A subscriber on continuation coverage must notify the SEBB program. The notification must be received no later than sixty days after the date their dependent is no longer eligible under this section. See WAC 182-31-150(2) for the consequences of not removing an ineligible dependent from SEBB benefits.

The following are eligible as dependents:

(1) Legal spouse. A former spouse~~((s are))~~ is not an eligible dependent~~((s))~~ 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.))~~ A former state registered domestic partner~~((s are))~~ is not an eligible dependent~~((s))~~ 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 (f) of this subsection. Children are defined as the subscriber's:

(a) Children ~~((of the school subscriber))~~ based on establishment of a parent-child relationship as described in RCW ~~((26.26.101))~~ 26.26A.100, except when parental rights have been terminated;

(b) Children of the subscriber's spouse, based on the spouse's establishment of a parent-child relationship ~~((as described in RCW 26.26.101))~~, except when parental rights have been terminated. The stepchild's relationship to the subscriber (and eligibility as a dependent) ends on the same date the marriage with the spouse ends through divorce, annulment, dissolution, termination, or death;

(c) Children of the subscriber's state registered domestic partner, based on the state registered domestic partner's establishment of a parent-child relationship ~~((as described in RCW 26.26.101))~~, except when parental rights have been terminated. The child's relationship to the subscriber (and eligibility as a dependent) ends on the same date the subscriber's legal relationship with the state registered domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(e) Children specified in a court order or divorce decree for whom the subscriber has a legal obligation to provide support or health care coverage;

(f) Children of any age with a developmental or physical disability that renders the child incapable of self-sustaining employment and chiefly dependent upon the subscriber for support and maintenance provided such condition~~((s))~~ occurs before the age of twenty-six:

(i) The subscriber must provide proof of the disability and dependency within sixty days of the child's attainment of age twenty-six;

(ii) The subscriber must ~~((agree to))~~ notify the SEBB program, in writing, no later than sixty days after the date that the child is no longer eligible under this subsection;

(iii) A child with a developmental or physical disability who becomes self-supporting is not eligible under this subsection as of the last day of the month in which they become capable of self-support;

(iv) A child with a developmental or physical disability age twenty-six and older who becomes capable of self-support does not regain eligibility if they later become incapable of self-support; and

(v) The SEBB program with input from the applicable contracted vendor will periodically verify 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, which may require renewed proof from the subscriber.

(g) Extended dependent in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or the 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. Extended dependent child does not include a foster child unless the subscriber, the subscriber's spouse, or the subscriber's state registered domestic partner has assumed a legal

obligation for total or partial support in anticipation of adoption.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-150 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in school employees benefits board (SEBB) benefits.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled in a medical plan to enroll their dependent. Subscribers must satisfy the enrollment requirements as described in subsection ~~((5))~~ (4) of this section and may enroll eligible dependents at the following times:

(a) When the subscriber becomes eligible and enrolls in SEBB 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 subscriber enrolls a newborn child in supplemental dependent life insurance. The newborn child's dependent life insurance coverage or AD&D insurance will be effective on the date the child becomes fourteen days old;

(b) During the annual open enrollment. SEBB ~~((health plan))~~ benefits coverage begins January 1st of the following year; or

(c) During special open enrollment. Subscribers may enroll dependents during a special open enrollment as described in subsections (3) and (5)(f) 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 ~~((fails to))~~ meets the eligibility criteria as described in WAC 182-31-140. Subscribers must ~~((notify their SEBB organization))~~ provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of dependent ceasing to be eligible as a dependent child as described in WAC 182-31-140(3). School employees must notify their SEBB organization when a dependent is no longer eligible except as required under WAC 182-31-140(3)(f)(ii). All other subscribers must notify the SEBB program. Consequences for not submitting notice within the required 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;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-31-130;

(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 ~~((SEBB organization))~~ state for the dependent's health plan coverage after the dependent lost eligibility.



(b) School employees have the opportunity to remove eligible 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 (5)(f) of this section.

(c) Enrollees with SEBB continuation coverage as described in WAC 182-31-090 may remove dependents from their SEBB ~~((insurance coverage))~~ benefits outside of the annual open enrollment or a special open enrollment by providing written notice to the SEBB program. The dependent will be removed from the subscriber's SEBB ~~((insurance coverage))~~ benefits prospectively. SEBB ~~((insurance coverage))~~ benefits will end on the last day of the month in which the written notice is received by the SEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, coverage will end on the last day of the previous month.

### (3) Special open enrollment.

(a) Subscribers may enroll or remove their eligible dependents ~~((or remove them))~~ outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

(i) ~~((Health plan))~~ SEBB benefits 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 the later of the event date as described in WAC 182-31-140(3) or eligibility certification.

(iii) The dependent will be removed from the subscriber's ~~((health plan))~~ SEBB benefits coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, ~~((health plan))~~ SEBB benefits coverage will begin or end as follows:

- For the newly born child, ~~((health plan))~~ SEBB benefits coverage will begin the date of birth;

- For a newly adopted child ~~((health plan))~~ SEBB benefits 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 supplemental dependent life insurance coverage or

accidental death and dismemberment insurance purchased by the employee becomes effective.

Any one of the following events may create a special open enrollment:

(b) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership ~~((on a state registry when the dependent is a tax dependent of the subscriber))~~;

(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.

(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);

(d) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (e) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(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 SEBB program's annual open enrollment;

(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 and that change in residence results in the dependent losing their health insurance;

(h) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(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) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or ~~((a state))~~ CHIP.

~~((4))~~ ~~((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.~~

~~((5))~~ **Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection.** A school employee must submit the required forms to their SEBB organization, ~~((and other))~~ a subscriber(s) on continuation coverage must submit the required forms to the SEBB program. In addition to the required forms indicating dependent enrollment, the sub-

subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the ~~((relevant))~~ required time frames.

(a) If a subscriber wants to enroll their eligible dependents when the subscriber becomes eligible to enroll in SEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the ~~((relevant))~~ required time frame as described in WAC 182-30-060 and 182-30-080.

(b) If a subscriber wants to enroll eligible dependents during the SEBB 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 SEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be received no later than sixty days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(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 182-31-140 (3)(f). To recertify an enrolled child with a disability, the required forms must be received by the SEBB program or the contracted vendor by the child's scheduled SEBB coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the required forms must be received no later than sixty days after the event that creates the special open enrollment.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-31-160 National Medical Support Notice (NMSN).** (1) When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

~~((+))~~ (a) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under ~~((subsection (3)))~~ (c) of this ~~((section))~~ subsection. School employees submit the required forms to their school employees benefits board (SEBB) organization. ~~((And other))~~ Subscribers on continuation coverage submit the required forms to the SEBB program;

~~((2))~~ (b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the SEBB organization or the SEBB program may make enroll-

ment or health plan coverage changes according to ~~((subsection (3)))~~ (c) of this ~~((section))~~ subsection upon request of:

~~((a))~~ (i) The child's other parent; or

~~((b))~~ (ii) Child support enforcement program.

~~((3))~~ (c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

~~((a))~~ (i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

~~((b))~~ (ii) A school employee who has waived SEBB medical as ~~((approved by the SEBB))~~ described in WAC 182-31-080 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

~~((e))~~ (iii) The subscriber's selected health plan will be changed if directed by the NMSN;

~~((4))~~ (iv) If the dependent is already enrolled under another SEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN; or

~~((e))~~ (v) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

~~((4))~~ (d) Changes to health plan coverage or enrollment as described in ~~((subsection (3)(a) through))~~ (c)(i) through (iii) of this ~~((section))~~ subsection will begin the first day of the month following receipt by the SEBB organization of the NMSN. If the NMSN is received by the SEBB organization on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in ~~((subsection (3)(d)))~~ (c)(iv) of this ~~((section))~~ subsection the last day of the month the NMSN is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

~~((5))~~ The subscriber may be eligible to make changes to their health plan enrollment and salary reduction elections related to the NMSN as described in WAC 182-30-090 (1) and (2) or 182-31-150(3).) (2) When a NMSN requires a spouse, former spouse, or other individual to provide coverage for a dependent enrolled in SEBB coverage and that coverage is in fact provided, the dependent may be removed from the subscriber's SEBB insurance coverage prospectively.

#### NEW SECTION

**WAC 182-31-190 School employees benefits board (SEBB) wellness incentive program eligibility and procedural requirements.** The school employees benefits board (SEBB) annually determines the design of the SEBB wellness incentive program.

(1) All subscribers are eligible to participate in the SEBB wellness incentive program.

(2) For plan year 2020, all subscribers that register in SmartHealth and complete the well-being assessment during the 2019 open enrollment will earn a \$50 incentive as a reduction in their SEBB medical deductible or a deposit into their SEBB health savings account (HSA).

(3) Effective January 1, 2020, to receive the SEBB 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, subscribers must complete SEBB wellness incentive program requirements during the current plan year by the following deadline:

(a) For subscribers continuing enrollment in SEBB medical and subscribers enrolling in SEBB medical with an effective date in January through September, the deadline is November 30th; or

(b) For subscribers enrolling in SEBB medical with an effective date in October through December, the deadline is December 31st.

(4) Subscribers who do not complete the requirements according to subsection (3) of this section within the time frame described are not eligible to receive a SEBB wellness incentive the following plan year.

Note: All 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 SEBB 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.

(5) A SEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (3) of this section the subscriber is still eligible for the SEBB wellness incentive program in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a SEBB wellness incentive program or a SEBB wellness incentive, or both; or

(c) Specific appropriations are provided for wellness incentives.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-020 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organizations, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Appellant" means a person who requests a ~~((review by))~~ brief adjudicative proceeding with the SEBB appeals unit ~~((or a formal administrative hearing))~~

"Authority" or "HCA" means the Washington state health care authority.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-32-2000 through 182-32-2160.

"Business days" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB 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 SEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, ~~((either))~~ a school employees benefits board (SEBB) organization, contracted vendor, or the SEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to SEBB 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 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability or supplemental short-term disability paid for by the employee.

"Dispositive motion" is a motion made to a presiding officer, review officer, or hearing officer to decide a claim or case in favor of the moving party without further proceedings.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items. ~~((Documents include evidence needed to verify eligibility for SEBB benefits and complete the enrollment process.~~

~~"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-060.~~

~~"Employer-paid coverage" means SEBB insurance coverage for which an employer contribution is made by a SEBB organization for school employees eligible in WAC 182-31-060.)~~

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or governmental-sponsored programs such as medicare or medicaid.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, review officer, or hear-

ing officer. A document is considered filed when it is received by the health care authority or its designee.

"Final order" means an order that is the final health care authority decision.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through ~~((34.05.479))~~ 34.05.476 and WAC 182-32-3000 through 182-32-3200.

"HCA hearing representative" means a person who is authorized to represent the SEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the ~~((school employees benefits board))~~ SEBB and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or
- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Life insurance" ~~((for eligible school employees includes))~~ means any basic life insurance ~~((and accidental death and dismemberment (AD&D) insurance))~~ paid for by the ~~((school employees benefits board (-)))~~ SEBB(+) organization, as well as supplemental life insurance ~~((and supplemental AD&D insurance))~~ offered to and paid for by school employees for themselves and their dependents.

"LTD insurance" or "long-term disability insurance" includes ~~((any))~~ basic long-term disability insurance paid for by the ~~((school employees benefits board (-)))~~ SEBB(+) organization and ~~((any))~~ supplemental long-term disability insurance offered to and paid for by the school employee.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under ~~((this))~~ chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premiums is less than ninety-five percent of the additional cost an employee would be required to pay to

enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Public employees benefits board" or "PEBB" means the board established under provisions of RCW 41.05.055.

"Review officer or officers" means one or more delegates from the director that consider appeals relating to the administration of SEBB benefits by the SEBB program.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pre-tax basis to participate in the dependent care assistance program (DCAP), medical flexible spending arrangement (FSA), or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts ~~((educational service districts,))~~ and charter schools established under chapter 28A.710 RCW;

• Represented employees of educational service districts; and

• Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefit board.

"SEBB" means the school employees benefits board established in RCW 41.05.740.

"SEBB benefits" means one or more insurance coverages or other employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130), and eligible dependents (as described in WAC 182-31-140).

"State registered domestic partner," has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a

tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-064 Applicable rules and laws.** (1) A school employees benefits board (SEBB) organization must apply SEBB program rules adopted in the Washington Administrative Code (WAC) and follow instructions from the authority.

(2) A presiding officer, review officer or officers, or hearing officer must first apply the applicable ~~((school employees benefits board (SEBB)))~~ SEBB ~~((SEBB))~~ program rules adopted in the ~~((Washington Administrative Code (WAC)))~~ WAC ~~((WAC))~~. If no SEBB program rule applies, the presiding officer, review officer or officers, or hearing officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-32-130, and court decisions.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-066 Burden of proof, standard of proof, and presumptions.** (1) The burden of proof is a party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer, review officer or officers, or hearing officer that a position is correct based on the standard of proof. Unless stated otherwise in rules or law, the appellant has the burden of proof in a brief adjudicative proceeding or formal administrative hearing.

(2) Standard of proof refers to the ~~((amount of evidence needed))~~ degree or level of proof to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a brief adjudicative proceeding or formal administrative hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and school employees benefits board (SEBB) organizations are presumed to have properly performed their duties and acted as described in the law, unless substantial evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-120 Computation of time.** (1) In computing any period of time prescribed by this chapter, the day of the event from which the time begins to run is not included. (For example, if an initial order is served on Friday and the party has twenty-one days to request a review, start counting the days with Saturday.)

(2) ~~((Except))~~ As provided in subsection (3) of this section, the last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, in which case the period extends to the end of the next business day.

(3) When the period of time prescribed or allowed is ~~((less than))~~ ten days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(4) The deadline is 5:00 p.m. on the last day of the computed period.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-130 Index of significant decisions.** (1) A final decision may be relied upon, used, or cited as precedent by a party only if the final order has been indexed in the authority's index of significant decisions in accordance with RCW 34.05.473 (1)(b).

(2) An index of significant decisions is available to the public on the health care authority's (HCA) web site. As decisions are indexed they will be available on the web site.

(3) A final decision published in the index of significant decisions may be removed from the index when:

(a) A published decision entered by the court of appeals or the supreme court reverses an indexed final decision; or

(b) HCA determines that the indexed final decision is no longer precedential due to changes in statute, rule, or policy.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2000 Brief adjudicative proceedings.** Pursuant to RCW 34.05.482, the authority will use brief adjudicative proceedings for issues identified in this chapter when doing so would not violate law, or when protection of the public interest does not require the authority to give notice and an opportunity to participate to persons other than the parties, or the issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through ~~((34.05.479))~~ 34.05.476 which govern formal administrative hearings.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2010 Appealing a decision regarding school employees benefits board (SEBB) eligibility, enrollment, premium payments, premium surcharges, a wellness incentive, or the administration of ~~((school employees benefits board (SEBB)))~~ benefits.** (1) Any current or former school employee of a school employees benefits board (SEBB) organization or their dependent aggrieved by a decision made by the SEBB organization with regard to SEBB eligibility, enrollment, or premium surcharges may appeal that decision to the SEBB organization by the process ~~((outlined))~~ described in WAC 182-32-2020.

**Note:** Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to SEBB (~~insurance coverage~~) benefits, as described in SEBB rules and policies. Enrollment decisions address the application for SEBB benefits as described in SEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any subscriber or dependent aggrieved by a decision made by the SEBB program with regard to SEBB eligibility, enrollment, premium payments, or premium surcharges, eligibility to participate in the SEBB wellness incentive program, or eligibility to receive the SEBB wellness incentive, may appeal that decision to the SEBB appeals unit by the process described in WAC 182-32-2030.

(3) Any enrollee aggrieved by a decision regarding the administration of a health plan, life insurance, accidental death and dismemberment (AD&D) insurance, or disability insurance, ((or property and casualty insurance)) may appeal that decision by following the appeal provisions of those plans, with the exception of:

(a) Enrollment decisions;

(b) Premium payment decisions other than life insurance or AD&D insurance premium payment decisions; and

(c) Eligibility decisions.

(4) Any SEBB enrollee aggrieved by a decision regarding the administration of SEBB property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(5) Any school employee aggrieved by a decision regarding the administration of a benefit offered under the salary reduction plan may appeal that decision by the process described in WAC 182-32-2050.

(6) Any subscriber aggrieved by a decision made by the SEBB wellness incentive program contracted vendor regarding the completion of the SEBB 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 182-32-2040.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2020** **Appealing a decision made by a school employees benefits board (SEBB) organization about eligibility, premium surcharges, or enrollment in benefits.** (1) An eligibility, premium surcharges, or enrollment decision made by a school employees benefits board (SEBB) organization may be appealed by submitting a written request for administrative review to the SEBB organization. The SEBB organization must receive the request for administrative review no later than thirty days after the date of the denial notice. The contents of the request for administrative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the request for administrative review, the SEBB organization (~~shall~~) must perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization (~~shall~~) must render a written decision within thirty days of receiving the written

request for administrative review. The written decision (~~shall~~) must be sent to the school employee or school employee's dependent who submitted the request for administrative review and must include a description of the appeal rights. The SEBB organization (~~shall~~) must also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within thirty days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the thirtieth day and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(c) The SEBB organization may reverse eligibility, premium surcharges, or enrollment decisions (~~based only on circumstances that arose due to delays caused by the SEBB organization or errors made by the SEBB organization~~) as permitted by WAC 182-30-060.

(2) Any current or former school employee or school employee's dependent who disagrees with the SEBB organization's decision in response to a request for administrative review, as described in subsection (1) of this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the SEBB organization's written decision on the request for administrative review. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit (~~shall~~) must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will then have two business days to respond to the request and provide the requested documentation and information. The SEBB organization will also send a copy of the documentation and information to the (~~employee, former employee, or the employee's dependent~~) appellant.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal the SEBB organization's written decision within thirty days by following the process in subsection (2) of this section, the SEBB organization's prior written decision becomes the (~~health care~~) authority's final decision without further action.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2030** **Appealing a school employees benefits board (SEBB) program decision regarding eligibility, enrollment, premium payments, (~~and~~) premium surcharges, and a SEBB wellness incentive.** (1) A decision

made by the school employees benefits board (SEBB) program regarding eligibility, enrollment, premium payments, ~~((or))~~ premium surcharges, or a SEBB wellness incentive may be appealed by submitting a request to the SEBB appeals unit for a brief adjudicative proceeding to be conducted by the authority.

(2) The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(3) The request for a brief adjudicative proceeding from a current or former school employee or school employee's dependent must be received by the SEBB appeals unit no later than thirty days after the date of the denial notice.

(4) The request for a brief adjudicative proceeding from a self-pay enrollee or dependent of self-pay enrollee must be received by the SEBB appeals unit no later than sixty days after the date of the denial notice.

(5) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(6) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(7) Failing to timely request a brief adjudicative proceeding to appeal a decision made under this section within applicable time frames described in subsections (3) and (4) of this section, will result in the prior decision becoming the authority's final decision without further action.

#### NEW SECTION

**WAC 182-32-2040 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements?** (1) Any subscriber aggrieved by a decision regarding the completion of the wellness incentive program requirements or request for a reasonable alternative to a wellness incentive program requirement may appeal that decision to the school employees benefits board (SEBB) wellness incentive program contracted vendor.

(2) Any subscriber who disagrees with a decision in response to an appeal filed with the SEBB wellness incentive program contracted vendor may appeal the decision by submitting a request for a brief adjudicative proceeding to the SEBB appeals unit.

(a) The request for a brief adjudicative proceeding from a current or former employee must be received by the SEBB appeals unit no later than thirty days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(b) The request for a brief adjudicative proceeding from a self-pay subscriber must be received by the SEBB appeals unit no later than sixty days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(3) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(4) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(5) If a subscriber fails to timely request a brief adjudicative proceeding of a decision made under subsection (1) of this section within thirty days by following the process in WAC 182-32-2020(2), the decision of the SEBB wellness incentive program contracted vendor becomes the authority's final decision.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2050 How can a school employee appeal a decision regarding the administration of benefits offered under the salary reduction plan?** (1) Any school employee who disagrees with a decision that denies eligibility for, or enrollment in, a benefit offered under the salary reduction plan may appeal that decision by submitting a written request for administrative review to their school employees benefits board (SEBB) organization. The SEBB organization must receive the written request for administrative review no later than thirty days after the date of the decision resulting in denial. The contents of the written request for administrative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the written request for administrative review, the SEBB organization shall perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization shall render a written decision within thirty days of receiving the written request for administrative review. The written decision shall be sent to the school employee who submitted the written request for review and must include a description of appeal rights. The SEBB organization shall also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within thirty days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the thirtieth day and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(2) Any school employee who disagrees with the SEBB organization's decision in response to a written request for administrative review, as described in this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the SEBB organization's written decision on the request for administrative review. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will

then have two business days to respond to the request and provide the documentation and information requested. The SEBB organization will also send a copy of the documentation and information to the school employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the SEBB organization's prior written decision becomes the authority's final decision without further action (~~by the authority~~).

(3) Any school employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the HCA contracted vendor by following the appeal process of that contracted vendor.

(a) Any school employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the medical FSA and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the SEBB appeals unit. The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the contracted vendor's appeal decision. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the contracted vendor's prior written decision becomes the health care authority (HCA) final decision.

(4) Any school employee aggrieved by a decision regarding the administration of the premium payment plan offered under the salary reduction plan may request a brief adjudicative proceeding to be conducted by the HCA by submitting a written request to the SEBB appeals unit for a brief adjudicative proceeding.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the denial notice by the SEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the notice of appeal has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the SEBB program's written decision becomes the authority's final decision.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2080 Who can appeal or represent a party in a brief adjudicative proceeding?** (1) The appellant may act as their own representative or may choose to be represented by another person, except that employees of the health care authority (HCA) or HCA's authorized agents may not represent an appellant, unless approved by a presiding officer or review officer.

(2) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the non-attorney representative must provide the school employees benefits board (SEBB) appeals unit and other parties with a signed, written consent permitting release to the nonattorney representative of the appellant's (~~personal~~) health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state representing the appellant must file a written notice of appearance containing the attorney's name, address, and telephone number with the presiding officer's office and serve all parties with the notice. In cases involving confidential information, the attorney must provide the SEBB appeals unit and other parties with a signed, written consent permitting release to the attorney of the appellant's (~~personal~~) health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the presiding officer or review officer or officer's office and serve all parties with the notice.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2085 Continuances.** The presiding officer, review officer or officers may grant in their sole discretion, a request for a continuance on motion of the appellant, the authority, or on (~~its~~) their own motion. The continuance may be up to thirty calendar days.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding.**

(1) An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization decision, SEBB program decision, or a decision made by SEBB program contracted vendor, may request review of the initial order by the authority. The appellant must file a written request for review of the initial order or make an oral request for review of the initial order with the SEBB appeals unit within twenty-one days after service of the initial order. The written or oral request for review of the initial order must be provided using the contact information included in the initial order. If the appellant fails to request review of the initial order within twenty-one days, the order becomes the final order without further action by the authority.



(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more review officers designated by the director of the authority.

(3) If the appellant ~~((have))~~ has not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own motion, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2105 Withdrawing the request for a brief adjudicative proceeding or review of an initial order.** (1) The appellant may withdraw the request for a brief adjudicative proceeding or review of an initial order for any reason, and at any time, by contacting the school employees benefits board (SEBB) appeals unit. The SEBB appeals unit will present the withdrawal request to the presiding officer or review officer or officers.

(2) The request for withdrawal must be made in writing.

(3) After a withdrawal request is received, the presiding officer or review officer or officers must enter and serve a written order dismissing the ~~((appeal))~~ brief adjudicative proceeding or review of an initial order.

(4) If an appellant withdraws a request for a brief adjudicative proceeding or review of an initial order, the appellant may not reinstate the request for a brief adjudicative proceeding or review of an initial order unless time remains on their original appeal period.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2120 Request for reconsideration.** (1) A request for reconsideration asks the review officer or officers to reconsider the final order because the party believes the review officer or officers made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the review officer or officers who entered the final order.

(4) If a party files a request for reconsideration:

(a) The review officer or officers must receive the request for reconsideration on or before the tenth business day after the service date of the final order;

(b) The party filing the request must send copies of the request to all other parties; and

(c) Within five business days of receiving a request for reconsideration, the review officer or officers must serve to all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(a) Responses to a request for reconsideration must be received by the review officer or officers no later than seven business days after the service date of the review officer or officers' notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the review officer or officers may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) Unless the request for reconsideration is denied as untimely filed under subsection (4)(a) of this section, the same review officer or officers who entered the final order, if reasonably available, will also consider the request as well as any responses received.

(8) The decision on the request for reconsideration must be in the form of a written order denying the request, granting the request in whole or in part and issuing a new written final order, or granting the petition and setting the matter for further hearing.

(9) If the review officer or officers do not send an order on the request for reconsideration within twenty calendar days of the date of the notice described in subsection (4)(c) of this section, the request is deemed denied.

(10) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a petition for reconsideration is not required before requesting judicial review.

(11) An order denying a request for reconsideration is not subject to judicial review.

(12) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not with reasonable diligence have discovered and produced ~~((at the hearing or before the ruling on a dispositive motion))~~ prior to the final order being issued.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2130 Judicial review of final order.** (1) Judicial review is the process of appealing a final order to a court.

(2) The appellant may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW ~~((34.05.546-))~~ 34.05.510 through 34.05.598. Neither the school employees benefits board (SEBB) program nor a SEBB organization may ~~((not))~~ request judicial review.

~~((3) The appellant should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.))~~

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2150 Review officer or officers—Designation and authority.** (1) The designation of a review offi-

cer or officers shall be consistent with the requirements of RCW 34.05.491 and the review officer or officers shall not have personally participated in the decision made by the school employees benefits board (SEBB) organization or SEBB program.

(2) The review officer or officers shall review the initial order and the record to determine if the initial order was correctly decided.

(3) The review officer or officers will issue a final order that will either:

- (a) Affirm the initial order in whole or in part; or
- (b) Reverse the initial order in whole or in part; or
- (c) Refer the matter for a formal administrative hearing;

or

- (d) Remand to the presiding officer in whole or in part.

(4) A review officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A review officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the review officer or officers may employ the ~~((authority))~~ authority's expertise as a basis for the decision.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing.** (1) The presiding officer or the review officer or officers, in their sole discretion, may convert a brief adjudicative proceeding to a formal administrative hearing at any time on motion by the subscriber or enrollee or their representative, the authority, or on the presiding officer or review officer or officers' own motion.

(2) The presiding or review officer or officers must convert the brief adjudicative proceeding to a formal administrative hearing when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the authority to give notice and an opportunity to participate to persons other than the parties, or when the issues and interests involved in the controversy warrant the use of the procedures ~~((of))~~ of RCW 34.05.413 through ~~((34.05.479))~~ 34.05.476 that govern formal administrative hearings.

(3) When a brief adjudicative proceeding is converted to a formal administrative hearing, the director ~~((may become the hearing officer or may))~~ designates a ~~((replacement))~~ hearing officer to conduct the formal administrative hearing upon notice to the subscriber or enrollee and the authority.

(4) When a brief adjudicative proceeding is converted to a formal administrative hearing, WAC 182-32-010 through 182-32-130 and WAC 182-32-3000 through 182-32-3200 apply to the formal administrative hearing.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3000 Formal administrative hearings.** (1) When a brief adjudicative proceeding is converted to a formal administrative hearing consistent with WAC ~~((182-~~

~~32-3160))~~ 182-32-2160, the director designates a hearing officer to conduct the formal administrative hearing.

(2) Formal administrative hearings are conducted consistent with the Administrative Procedure Act, RCW 34.05.413 through ~~((34.05.479))~~ 34.05.476.

(3) Part III describes the general rules and procedures that apply to school employees benefits board (SEBB) benefits formal administrative hearings.

(a) This Part III 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 hereby adopted for use by the authority in school employees benefits board (SEBB) benefits formal administrative hearings. Other procedural rules adopted in chapters 182-30, 182-31, and 182-32 WAC are supplementary to the model rules of procedure.

(b) In the case of a conflict between the model rules of procedure and this Part III, the procedural rules adopted in this Part III shall govern.

(c) If there is a conflict between this Part III and specific SEBB program rules, the specific SEBB program rules prevail. SEBB program rules are found in chapters 182-30 and 182-31 WAC.

(d) Nothing in this Part III 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.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3010 Requirements to appear and represent a party in the formal administrative hearing process.** (1) All parties must provide the hearing officer and all other parties with their name, address, and telephone number.

(2) The appellant may act as their own representative or have another person represent them, except that employees of the health care authority (HCA) or HCA's authorized agents may not represent an appellant, unless approved by a hearing officer.

(3) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the hearing officer and all other parties with the representative's name, address, and telephone number. In cases involving confidential information, the non-attorney representative must provide the HCA hearing representative with a signed, written consent permitting release to the nonattorney representative of ~~((personal))~~ health information protected by state or federal law.

(4) An attorney admitted to practice law in Washington state, who wishes to represent the appellant, must file a written notice of appearance containing the attorney's name, address, and telephone number with the hearing officer's office and serve all parties with the notice. In cases involving confidential information, the attorney representative must provide the HCA hearing representative with a signed, written consent permitting release to the attorney representative

of the appellant's (~~personal~~) health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the hearing officer's office and serve all parties with the notice.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3030 Authority of the hearing officer.**

(1) A hearing officer must hear and decide the issues (~~de novo~~ (~~new~~)) based on the evidence and oral or written arguments presented during a formal administrative hearing and admitted into the record.

(2) A hearing officer has no inherent or common law powers, and is limited to those powers granted by the state constitution, statutes, or rules.

(3) A hearing officer may not decide that a rule is invalid or unenforceable. If the validity of a rule is raised during a formal administrative hearing, the hearing officer may allow argument only to preserve the record for judicial review.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3080 Time requirements for service of notices made by the hearing officer.**

(1) The hearing officer or their designee must serve a notice of a formal administrative hearing to all parties and their representatives at least twenty-one calendar days before the hearing date. The parties may agree to, but the hearing officer cannot impose, a shorter notice period.

(2) If a prehearing conference or dispositive motion hearing is scheduled, the hearing officer must serve a notice of the prehearing conference or dispositive motion hearing to the parties and their representatives at least seven business days before the date of the prehearing conference or dispositive motion hearing except:

(a) The hearing officer may change any scheduled formal administrative hearing into a prehearing conference or dispositive motion hearing and provide less than seven business days' notice of the prehearing conference or dispositive motion hearing; and

(b) The hearing officer may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether to grant a continuance.

(3) The hearing officer must reschedule a formal administrative hearing if necessary to comply with the notice requirements in Part III of this chapter.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3100 Rescheduling and continuances for formal administrative hearings.**

(1) Any party may request the hearing officer to reschedule a formal administrative hearing if a rule requires notice of a hearing and the amount of notice required was not provided.

(a) The hearing officer must reschedule the formal administrative hearing under circumstances identified in this (~~subsection~~) chapter if requested by any party.

(b) The parties may agree to shorten the amount of notice required by any rule.

(2) Any party may request a continuance of a formal administrative hearing either orally or in writing.

(a) In each formal administrative hearing, the hearing officer must grant each party's first request for a continuance. The continuance may be up to thirty calendar days.

(b) The hearing officer may grant each party up to one additional continuance of up to thirty calendar days because of extraordinary circumstances (~~established at a proceeding~~).

(c) After granting a continuance, the hearing officer or their designee must:

(i) Immediately telephone all other parties to inform them the hearing was continued; and

(ii) Serve an order of continuance on the parties no later than fourteen days before the new hearing date. All orders of continuance must provide a new deadline for filing documents with the hearing officer. The new filing deadline can be no less than ten calendar days prior to the new formal administrative hearing date. If the continuance is granted pursuant to (b) of this subsection, then the order of continuance must also include findings of fact that state with specificity the extraordinary circumstances for which the hearing officer granted the continuance.

(3) Regardless of whether a party has been granted a continuance as described in subsection (~~(+)~~) ~~(2)~~(b) of this section, the hearing officer must grant a continuance if a new material issue is raised during the formal administrative hearing and a party requests a continuance.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3120 Dispositive motions.** (1) A dispositive motion could dispose of one or all the issues in a formal administrative hearing, such as a motion to dismiss or motion for summary judgment.

(2) To request a dispositive motion hearing a party must file a written dispositive motion with the hearing officer and serve a copy of the motion to all other parties. The hearing officer may also set a dispositive motion hearing, and request briefing from the parties, to address any possible dispositive issues the hearing officer believes must be addressed before the hearing.

(3) The deadline to file a timely dispositive motion shall be ten calendar days before the scheduled hearing.

(4) Upon receiving a dispositive motion, a hearing officer:

(a) Must convert the scheduled hearing to a dispositive motion hearing when:

(i) The dispositive motion is timely filed with the hearing officer at least ten calendar days before the date of the hearing; and

(ii) The party filing the dispositive motion has not previously filed a dispositive motion.

(b) May schedule a dispositive motion hearing in all instances other than described in (a) of this subsection.

(5) The hearing officer may conduct the dispositive motion hearing in person or by telephone conference. For dis-

positive motion hearings scheduled to be held in person, the health care authority (HCA) hearing representative may choose to attend and participate in person or by telephone conference call.

(6) The party requesting the dispositive motion hearing must attend and participate in the dispositive motion hearing in person or by telephone. If the party requesting the motion hearing does not attend and participate in the dispositive motion hearing, the hearing officer will enter an order (~~of default~~) dismissing the dispositive motion.

(7) During a dispositive motion hearing, the hearing officer can only consider the filed dispositive motions, any response to the motions, evidence submitted to support or oppose the motions, and argument on the motions. Prior to rescheduling any necessary hearings, the hearing officer must serve a written order on the dispositive motions.

(8) The hearing officer must serve the written order on the dispositive motions to all parties no later than eighteen calendar days after the dispositive motion hearing is held. Orders on dispositive motions are subject to motions for reconsideration or petitions for judicial review as described in WAC 182-32-2120 and 182-32-2130.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3130 Subpoenas.** (1) Hearing officers, the health care authority (HCA) hearing representative, and attorneys for the parties may prepare subpoenas as described in Washington state civil rule 45, unless otherwise prohibited by law. Any party may request the hearing officer prepare a subpoena on their behalf.

(2) The hearing officer may schedule a prehearing conference to decide whether to issue a subpoena.

(3) If a party requests the hearing officer prepare a subpoena on its behalf, the party is responsible for:

- (a) Service of the subpoena; and
- (b) Any costs associated with:
  - (i) Compliance with the subpoena; and
  - (ii) Witness fees as described in RCW 34.05.446(7).

(4) Service of a subpoena must be made by a person who is at least eighteen years old and not a party to the hearing. Service of the subpoena is complete when the person serving the subpoena:

- (a) Gives the person or entity named in the subpoena a copy of the subpoena; or
- (b) Leaves a copy of the subpoena with a person over the age of eighteen at the residence or place of business of the person or entity named in the subpoena.

(5) To prove service of a subpoena on a witness, the person serving the subpoena must file with the hearing officer's office a signed, written, and dated statement that includes:

- (a) The name of the person to whom service of the subpoena occurred;
- (b) The date of the service of the subpoena occurred;
- (c) The address where the service of the subpoena occurred; and
- (d) The name, age, and address of the person who provided service of the subpoena.

(6) A (~~party~~) person or entity subject to or affected by the subpoena may request the hearing officer quash (set aside) or change a subpoena request at any time before the deadline given in the subpoena.

(7) A hearing officer may quash (set aside) or change a subpoena if it is unreasonable.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3140 Orders of dismissal—Reinstating a formal administrative hearing after an order of dismissal.** (1) An order of dismissal is an order from the hearing officer ending the matter. The order is entered because the party who made the appeal withdrew from the proceeding, the appellant is no longer aggrieved, the hearing officer granted a dispositive motion dismissing the matter, or the hearing officer entered an order of default because the party who made the appeal failed to attend or refused to participate in a prehearing conference or the formal administrative hearing.

(2) The order of dismissal becomes a final order if no party files a request to vacate the order as described in subsections (3) through (7) of this section.

(3) If the hearing officer enters and serves an order dismissing the formal administrative hearing, the appellant may file a written request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, the hearing officer must schedule and serve notice of a prehearing conference as described in WAC 182-32-3080. At the prehearing conference, the party asking that the order of dismissal be vacated has the burden to show good cause according to subsection (8) of this section for an order of dismissal to be vacated and the matter to be reinstated.

(4) The request to vacate an order of dismissal must be filed with the hearing officer and the other parties. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated.

(5) The request to vacate an order of dismissal must be filed with the hearing officer no later than twenty-one calendar days after the date the order of dismissal was entered. If no request is received within that deadline, the dismissal order becomes (~~a final order and the final order will stand~~) the health care authority's final decision without further action.

(6) (~~if~~) The hearing officer (~~finds~~) will consider if there is good cause, as described in subsection (8) of this section, for the order of dismissal to be vacated(~~;~~). The hearing officer must enter and serve a written order (~~to the parties~~) setting forth the findings of fact(~~;~~) and conclusions of law(~~;~~ and reinstatement of) supporting the decision of whether to reinstate the matter.

(7) If the order of dismissal is vacated, the hearing officer will conduct a formal administrative hearing at which the parties may present argument and evidence about issues raised in the original appeal. The formal administrative hearing may occur immediately following the prehearing conference on the request to vacate only if agreed to by the parties

and the hearing officer, otherwise a formal administrative hearing date must be scheduled by the hearing officer.

(8) Good cause is a substantial reason or legal justification for failing to appear, act, or respond to an action using the provisions of superior court civil rule 60 as a guideline. This good cause exception applies only to this chapter. This good cause exception does not apply to any other chapter or chapters in Title 182 WAC.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3180 Request for reconsideration and response—Process.** (1) A request for reconsideration asks the hearing officer to reconsider the final order because the party believes the hearing officer made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the hearing officer who entered the final order.

(4) If a party files a request for reconsideration:

(a) The hearing officer must receive the request for reconsideration on or before the tenth business day after the service date of the final order;

(b) The party filing the request must serve copies of the request on ~~((to))~~ all other parties on the same day the request is served on the hearing officer; and

(c) Within five business days of receiving a request for reconsideration, the hearing officer must serve to all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(a) Responses to a request for reconsideration must be received by the hearing officer no later than seven business days after the service date of the hearing officer's notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the hearing officer may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not ~~((with reasonable diligence))~~ have reasonably discovered and produced at the hearing or before the ruling on a dispositive motion.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3190 Decisions on requests for reconsideration.** (1) Unless the request for reconsideration is

denied as untimely filed under WAC 182-32-3180, the same hearing officer who entered the final order, if reasonably available, will also dispose of the request as well as any responses received.

(2) The decision on the request for reconsideration must be in the form of a written order denying or granting the request in whole or in part and if the request is granted issuing a new written final order.

(3) If the hearing officer does not send an order on the request for reconsideration within twenty calendar days of the date of the notice described in WAC ~~((182-32-2120))~~ 182-32-3180(4)(c), the request is deemed denied.

(4) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a request for reconsideration is not required before requesting judicial review.

(5) An order denying a request for reconsideration is not subject to judicial review.

**AMENDATORY SECTION** (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-3200 Judicial review of final order.** (1) Judicial review is the process of appealing a final order to a court.

(2) The appellant may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW ~~((34.05.546))~~ 34.05.510 through 34.05.598. The school employees benefits board (SEBB) program may not request judicial review.

(3) The appellant should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

## WSR 19-14-094

### PERMANENT RULES

### DEPARTMENT OF HEALTH

[Filed July 1, 2019, 2:12 p.m., effective August 1, 2019]

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

Purpose: WAC 246-282-005, sanitary control of shellfish, minimum performance standards, and 246-282-016 Aquaculture, the department of health (department) updated the publication date of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (guide) from 2015 to the most recently adopted 2017 version of rules previously adopted by reference. The United States Food and Drug Administration requires all shellfish-producing states to follow the most current version of the NSSP guide. The department removed an exemption from the requirements for aquaculture hatchery operations because the 2017 NSSP guide no longer allows the exemption.

Citation of Rules Affected by this Order: Amending WAC 246-282-005 and 246-282-016.

Statutory Authority for Adoption: RCW 96.30.030 [69.30.030].

Adopted under notice filed as WSR 19-09-018 on April 8, 2019.

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

Date Adopted: June 26, 2019.

Clark Halvorson  
Assistant Secretary

AMENDATORY SECTION (Amending WSR 17-12-047, filed 6/1/17, effective 7/2/17)

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

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (~~((2015))~~) (2017) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

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

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

**WAC 246-282-016 Aquaculture.** Any person who conducts an aquaculture operation and is in possession of a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must meet all requirements of this chapter (~~(, except such person is exempt from all requirements of this chapter for the purpose of conducting aquaculture activities limited to the following:~~

~~(1) A hatchery operation; or  
(2) A nursery operation handling only seed that is obtained from a hatchery)).~~

**WSR 19-14-107**  
**PERMANENT RULES**  
**STATE BOARD OF HEALTH**

[Filed July 2, 2019, 1:10 p.m., effective August 1, 2021]

Effective Date of Rule: August 1, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Restrictions imposed by the 2009 legislature on the implementation of new or amended school facility rules are again included in the 2019-2021 state operating budget and prohibit implementation of the rules through June 2021.

Purpose: This filing delays the effective date of new sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, two years because of legislative direction in the state operating budget (ESHB 1109) prohibiting implementation until the legislature acts to formally fund implementation. The rules provide minimum environmental health and safety standards for schools.

New sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, were adopted by the state board of health (board) on August 12, 2009, under proposed rule making (CR-102), WSR 09-14-136. The board filed a rule-making order (CR-103), WSR 10-01-174, on December 22, 2009, setting the effective date of the rules as July 1, 2010. However, in advance of the board's actions, the 2009 legislature adopted a proviso in the state operating budget (ESHB 1244) suspending implementation of the new rules until the legislature acts to formally fund implementation. The proviso has been added to all subsequent state operating budgets, including the 2019-2021 state operating budget (ESHB 1109). In response, the board has taken the following series of actions to delay implementation of the new rules:

- Voted on March 10, 2010, to file an amended rule-making order, WSR 10-12-018, on May 21, 2010, to change the effective date to July 1, 2011;
- Voted on April 13, 2011, to file an amended rule-making order, WSR 11-10-080, on May 3, 2011, to delay the effective date another two years to July 1, 2013;
- Voted on March 13, 2013, to file an amended rule-making order, WSR 13-09-040, on April 11, 2013, to delay the effective date another two years to July 1, 2015;
- Voted on March 11, 2015, to file an amended rule-making order, WSR 15-09-070, on April 15, 2015, to delay the effective date of the rules another two years to July 1, 2017; and
- Voted on June 14, 2017, to file an amended rule-making order, WSR 17-14-055, on June 28, 2017, to delay the effective date of the rules another two years to August 1, 2019.

The board again voted on June 12, 2019, to file a rule-making order to extend the effective date of the rules to August 1, 2021. The board will continue to monitor the state budget and budget proviso suspending implementation of the new rules during the biennium for possible implementation in 2021.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 09-14-136 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: See WSR 10-01-174.

A final cost-benefit analysis is available by contacting Stuart Glasoe, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4111, fax 360-236-4088, TTY 360-833-6388 or 711, email stuart.glasoe@sboh.wa.gov, web site sboh.wa.gov.

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

Number of Sections Adopted at 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: June 12, 2019.

Michelle A. Davis  
Executive Director

### WSR 19-14-117

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed July 3, 2019, 7:59 a.m., effective August 3, 2019]

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

Purpose: The purpose of this rule making is to update hop bale labeling requirements and to update public disclosure rules. Updating hop bale labeling requirements is necessary to facilitate the use of new technology using hand-held inkjet printers for hop bale marketing and to acknowledge harmonization of United States hop variety codes with international standards. Updating public disclosure rules for the commission is a housekeeping task necessary to implement RCW 42.56.120.

Citation of Rules Affected by this Order: Amending WAC 16-532-120 and 16-532-145.

Statutory Authority for Adoption: RCW 15.65.047 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 19-10-021 on April 23, 2019.

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 0.

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

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

Date Adopted: July 3, 2019.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 08-14-054, filed 6/25/08, effective 7/26/08)

**WAC 16-532-120 Labeling.** Each lot of hops must be identified by the crop year produced, grower number and lot designation, and variety code stenciled on each bale.

(1) A ~~((three-digit))~~ five-character grower number will be assigned by the Washington hop commodity board (commission) prior to the annual harvest.

(2) The first marking will consist of the last two digits of the crop year and a hyphen, followed by the ~~((three-digit))~~ five-character grower number and three-digit lot designation (example: ~~((8-000-001))~~ 18-WA000-001).

(3) The first marking shall be affixed ~~((on the head or top))~~ in an easily identified location on the upper face of the bale (nonsewn side) and shall be in characters approximately two inches high.

(4) The second marking will ~~((consist of))~~ designate the hop variety, utilizing a ~~((two-letter))~~ three-character abbreviation. A list of ~~((approved two-letter))~~ three-character abbreviations will be approved annually by the Washington state hop commodity board, and will be consistent with internationally accepted variety codes issued by the International Hop Growers Convention.

(5) The second marking shall be affixed immediately below the first marking on the ~~((head or top))~~ upper face of the bale (nonsewn side), and shall be in characters approximately two inches high.

AMENDATORY SECTION (Amending WSR 17-05-032, filed 2/8/17, effective 3/11/17)

**WAC 16-532-145 Fees—Inspection and copying.** (1) No fee shall be charged for the inspection of public records.

(2) ~~((The commission shall charge fifteen cents per black and white copy plus postage to reimburse itself for the costs of providing copies of public records.~~

(3) ~~Requests for records in special formatting, including color copies, will be charged at the amount necessary to reimburse the commission for its actual production costs. If the~~

public records officer deems it more efficient to have copying or duplicating done outside the commission, the charges will be based on the actual cost of such outside copying or duplicating service.) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records. Funds were not allocated for performing a study to calculate such costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential commission functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120.

(4) For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington hop commission. The commission may require that all charges be paid in advance of release of the copies of the records.

~~((4))~~ (5) The commission or its designee may waive any of the foregoing copying costs.

**WSR 19-14-118**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed July 3, 2019, 8:38 a.m., effective August 3, 2019]

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

Purpose: To revise adoption-by-reference dates in Title 480 WAC to incorporate the most recent version of adopted federal rules and other adopted publications.

Citation of Rules Affected by this Order: Amending WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-62-999, 480-70-999, 480-73-999, 480-75-250, 480-75-999, 480-90-999, 480-93-223, 480-93-999, 480-100-999, 480-103-999, 480-108-999, 480-109-999, 480-120-999, and 480-123-999.

Statutory Authority for Adoption: RCW 80.10.040, 80.04.160, 81.04.160, and 34.05.353.

Adopted under notice filed as WSR 19-10-074 on May 1, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 18, 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: July 3, 2019.

Mark L. Johnson  
Executive Director and Secretary

AMENDATORY SECTION (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-14-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publication, effective dates, references within this chapter, and availability of the resource is within Title 49 Code of Federal Regulations (C.F.R.), including all appendices and amendments is published by the United States Government Printing Office.

(1) The commission adopts the version in effect on December 31, (~~(2017)~~) 2018, for 49 C.F.R. Parts 171, 172 and 173.

(2) This publication is referenced in WAC 480-14-250 (Insurance requirements).

(3) Copies of Title 49 C.F.R. are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-15-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~(2018)~~) 2019.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, (~~(2017)~~) 2018.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.



AMENDATORY SECTION (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-30-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2018))~~ 2019.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((July 1, 2017))~~ December 31, 2018.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements) and WAC 480-30-226 (Intrastate medical waivers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-31-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2018))~~ 2019.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((July 1, 2017))~~ December 31, 2018.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), and WAC 480-31-130 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore,

<https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 18-10-001, filed 4/18/18, effective 5/19/18)

**WAC 480-62-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ~~((2017))~~ 2018.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), WAC 480-62-240 (Railroad owned or operated passenger carrying vehicles—Equipment), ~~((and))~~ WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements), and WAC 480-62-293 (Contract crew transportation enforcement).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ~~((2017))~~ 2018.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices) ~~((and))~~, WAC 480-62-235 (Flaggers), and WAC 480-62-245 (Railroad owned or operated passenger carrying vehicles—Operation).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **ANSI/ISEA Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, ~~((2017))~~ 2018.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI/ISEA Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits and Supplies are available from IHS Global Engineering Documents in Englewood, Colorado.

(4) **ANSI/ISEA 207-~~((2015))~~ 2011 - American National Standard for High-Visibility Public Safety Vests** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, ~~((2017))~~ 2018.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 207-~~((2015))~~ 2011 - American National Standard for High-Visibility Public Safety Vests are available from IHS Global Engineering Documents in Englewood, Colorado.

(5) *North American Standard Out-of-Service Criteria* (OOSC) is published by the *Commercial Vehicle Safety Alliance* (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2017))~~ 2019.

(b) This publication is referenced in WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-70-999 Adoption by reference.** In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American Standard Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2018))~~ 2019.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 40 Code of Federal Regulations**, cited as 40 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((July 1, 2017))~~ December 31, 2018.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((July 1, 2017))~~ December 31, 2018.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore,

<https://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-73-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., is published by the United States Government Printing Office.

(2) The commission adopts the version in effect on April 1, ~~((2017))~~ 2018.

(3) This publication is referenced in WAC 480-73-130 (Accounting system requirements), WAC 480-73-150 (Retaining and preserving records and reports), and WAC 480-73-160 (Annual reports).

(4) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending WSR 14-19-001, filed 9/3/14, effective 10/4/14)

**WAC 480-75-250 Civil penalty for violation of chapter 81.88 RCW.** Any pipeline company that violates any pipeline safety provision of any commission order, or any rule in this chapter including those rules adopted by reference, or chapter 81.88 RCW is subject to a civil penalty not to exceed ~~((two hundred thousand dollars for each violation for each day that the violation persists. The maximum civil penalty under this subsection for a related series of violations is two million dollars))~~ the amounts in 49 C.F.R. Sec. 190.223.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-75-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., Parts 190.221, 190.223, 195, 196, 198, and 199 including all appendices and amendments except for 49 C.F.R. Sections 195.0 ~~((and))~~, 195.1, ~~((and 49 C.F.R. Sections))~~ 199.1 ~~((and))~~, 199.2, and 196.1 published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((January 23, 2017))~~ March 1, 2019.

(b) This publication is referenced in WAC 480-75-100 (Definitions), WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-250 (Civil penalty for violation of chapter 81.88 RCW), WAC 480-75-650 (Annual reports), and

WAC 480-75-660 (Procedural manual for operations, maintenance, and emergencies).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>.

(2) **The American Society of Mechanical Engineers (ASME) B31.4**, 2006 edition, October 20, 2006.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from ASME, <https://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The 2007 edition, July 2007, of **Section IX of the ASME Boiler and Pressure Vessel Code**.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of the 2007 edition, of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from ASME, <https://www.asme.org/codes/>. It is also available for inspection at the commission.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** (20th edition 2005, including errata/addendum July 2007 and errata 2 (December 2008)).

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <https://www.api.org/>. It is also available for inspection at the commission.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-90-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Publishing Office.

(a) The commission adopts the version in effect on April 1, ~~((2015))~~ **2018**.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244 (Transferring cash or assuming obligations), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Publishing Office in

Washington, D.C., or online at <https://www.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 2007.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water ((Companies)) Utilities* is a copyrighted document. Copies are available from NARUC, in Washington, D.C. or at NARUC publications store online: (~~(http://www.naruc.org/store)~~) <https://www.naruc.org/resolutions-index/2007-annual-meeting-resolutions/>. It is also available for inspection at the commission branch of the state library.

**AMENDATORY SECTION** (Amending WSR 14-19-002, filed 9/3/14, effective 10/4/14)

**WAC 480-93-223 Civil penalty for violation of chapter 81.88 RCW and commission gas safety rules.** Any gas pipeline company that violates any pipeline safety provision of any commission order, or any rule in this chapter including those rules adopted by reference, or chapter 81.88 RCW is subject to a civil penalty not to exceed ~~((two hundred thousand dollars for each violation for each day that the violation persists. The maximum civil penalty under this subsection for a related series of violations is two million dollars))~~ the amounts in 49 C.F.R. Sec. 190.223.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-93-999 Adoption by reference.** In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. Each regulation or standard is listed by publication, publisher, scope of what the commission is adopting, effective date of the regulation or standard, the place within the commission's rules the regulation or standard is referenced, and where to obtain the regulation or standard.

(1) Parts 190.221, 190.223, 191, 192, 193, 196, 198, and 199 of Title 49 Code of Federal Regulations, including all appendices and amendments thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on ~~((January 23, 2017))~~ March 1, 2019, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 196.1, 198.1, 199.1. In addition, please note that in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 C.F.R. ~~((§))~~ Sec. 192.801 (b)(2).

(b) This publication is referenced in WAC 480-93-005 (Definitions), WAC 480-93-015 (Odorization of gas), WAC 480-93-018 (Records), WAC 480-93-080 (Welder and plastic joiner identification and qualification), WAC 480-93-100 (Valves), WAC 480-93-110 (Corrosion control), WAC 480-93-124 (Pipeline markers), WAC 480-93-160 (Reporting

requirements of proposed construction), WAC 480-93-170 (Tests and reports for gas pipelines), WAC 480-93-180 (Plans and procedures), WAC 480-93-223 (Civil penalty for violation of chapter 81.88 RCW and commission gas safety rules), and WAC 480-93-18601 (Leak classification and action criteria—Grade—Definition—Priority of leak repair).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>. It is also available for inspection at the commission.

(2) Section IX of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(a) The commission adopts the 2007 edition, July 1, 2007, of Section IX of the ASME Boiler and Pressure Vessel Code.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code (2007 edition, including addenda through July 1, 2005) are available from ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104 (20th edition October 2005, including errata/addendum July 2007 and errata 2 (2008)).

(a) The commission adopts the 20th edition 2005, including errata/addendum July 2007 and errata 2 (2008) of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <https://www.api.org/>. It is also available for inspection at the commission.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-100-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Publishing Office.

(a) The commission adopts the version in effect on April 1, ~~((2015))~~ 2018.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligations), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Publishing Office in Washington D.C., or online at <https://www.gpo.gov/>, and

from various third-party vendors. It is also available for inspection at the commission library.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 2007.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water ((Companies)) Utilities* is a copyrighted document. Copies are available from NARUC in Washington, D.C. or at NARUC publications store online: (~~(http://www.naruc.org/store)~~) <https://www.naruc.org/resolutions-index/2007-annual-meeting-resolutions/>. It is also available for inspection at the commission branch of the state library.

(3) **The National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition effective in 2017, including errata 70-17-1 published September 29, 2016, errata 70-17-2 published December 16, 2016, 70-17-3 published January 11, 2017, and 70-17-4 published March 13, 2017.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts 02169, or at internet address <https://www.nfpa.org/>.

(4) **The American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2016.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. ANSI C12.1 - 2016 is available at American National Standards Institute web site <http://webstore.ansi.org/> (PDF) or at IHS Standards Store web site <https://global.ihs.com/> (PDF and print).

**AMENDATORY SECTION** (Amending WSR 18-20-098, filed 10/2/18, effective 11/2/18)

**WAC 480-103-999 Adoption by reference.** In this chapter, the commission adopts by reference the regulations and standards in *Regulations to Govern the Preservation of Records of Electric, Gas, and Water ((Companies)) Utilities*, published by the National Association of Regulatory Utility Commissioners (NARUC) as the standards for records retention for community solar companies unless otherwise specified in these rules. The commission adopts the version of this document in effect in 2007. ~~((This is a copyrighted publication, and copies are available from NARUC in Washington, D.C., or at the NARUC publications store online at~~

~~http://www.naruc.org/store~~)) The publication is ~~((also))~~ available for inspection at the commission's offices.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-108-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition effective 2017, including errata 70-17-1 published September 29, 2016, errata 70-17-2 published December 16, 2016, 70-17-3 published January 11, 2017, ~~((and))~~ 70-17-4 published March 13, 2017, 70-17-5 published May 9, 2018, and 70-17-06 published July 5, 2018.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address <https://www.nfpa.org/>.

(2) National Electrical Safety Code (NESC).

(a) The commission adopts the 2017 edition.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of the National Electrical Safety Code are available from the Institute of Electrical and Electronics Engineers at <https://standards.ieee.org/nesc>.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547-2018, Standard for ~~((Interconnecting))~~ Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces.

(a) The commission adopts the version published ~~((in 2003 and reaffirmed in 2008, including amendment 1547a-2014, published May 21, 2014))~~ April 6, 2018.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(4) ~~((American National Standards Institute (ANSI)))~~ Institute of Electrical and Electronics Engineers (IEEE) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005 and reaffirmed in 2011.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(5) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published June 11, 2014.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1993 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in 2007.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(8) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, Controllers and Interconnection Systems Equipment for Use with Distributed Energy Resources.

(a) The commission adopts the version published January 28, 2010.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) UL Standard 1741 is available from Underwriters Laboratory at <https://www.ul.com>.

(9) Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269.

(a) The commission adopts the version published on November 18, 2016, effective January 17, 2017.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-109-999 Adoption by reference.** In this chapter, the commission adopts by reference all, or portions of, the publications identified below. They are available for inspection at the commission library. The publications, publication dates, references within this chapter, and availability of the resources are as follows:

(1) *Northwest Conservation and Electric Power Plan* as published by the Northwest Power and Conservation Council.

(a) The commission adopts the seventh version published in 2016.

(b) This publication is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) Copies of *Seventh Northwest Conservation and Electric Power Plan* are available from the Northwest Power and Conservation Council at <https://www.nwccouncil.org/energy/powerplan/7/plan/>.

(2) *Weatherization Manual* as published by the Washington state department of commerce.

(a) The commission adopts the version published in ~~((July 2015 (with 2016 revisions)))~~ November 2018.

(b) This publication is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) Copies of *Weatherization Manual* are available from the Washington state department of commerce at ~~((<http://www.commerce.wa.gov/wp-content/uploads/2016/07/wx-manual-2016.pdf>))~~ <https://www.commerce.wa.gov/wp-content/uploads/2013/01/Wx-Manual-2018-Nov-1.docx>.

(3) The unit energy savings values as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the unit energy savings with status of "Active" or "Under Review" on January 10, ~~((2016))~~ 2019.

(b) This information is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) The spreadsheets containing the unit energy savings values are available for download at [https://rtf.nwccouncil.org/measures\(\(Default.asp\)\)](https://rtf.nwccouncil.org/measures((Default.asp))).

(4) The standard protocols as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the standard protocols with status of "Active" or "Under Review" on January 10, ~~((2016))~~ 2019.

(b) This information is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) The spreadsheets containing the standard protocols are available for download at <https://rtf.nwccouncil.org/standard-protocols>.

**AMENDATORY SECTION** (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-120-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" (ATIS 0100510) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed 2013.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-2005) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect as published in 2005.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the 2017 edition.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 C.F.R., is published by the United States Government Printing Office.

(a) For this publication as referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports), the commission adopts the version of the relevant sections in effect on October 1, ~~((2016))~~ 2018.

(b) For this publication as referenced in WAC 480-120-202 (Customer proprietary network information), WAC 480-120-146 (Changing service providers from one local exchange company to another), and any other reference in chapter 480-120 WAC, the commission adopts the version of the relevant sections in effect on October 1, ~~((2016))~~ 2018.

(c) The ~~((2016))~~ 2018 version of C.F.R. Title 47 is available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending WSR 17-15-054, filed 7/13/17, effective 8/13/17)

**WAC 480-123-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) The Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

(a) The commission adopts the version in effect on January 1, 2017.

(b) This publication is referenced in WAC 480-123-030 (contents of petition for eligible telecommunications carriers).

(c) Copies of the CTIA Consumer Code for Wireless Service are available at <https://www.ctia.org/initiatives/voluntary-guidelines/consumer-code-for-wireless-service>.

(2) Title 47, Code of Federal Regulations, cited as 47 C.F.R., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ~~((2016))~~ 2018.

(b) This publication is referenced in WAC 480-123-010 (Federal universal service contracts), WAC 480-123-060 (Annual certification of eligible telecommunications carriers), WAC 480-123-070 (Annual certifications and reports), WAC 480-123-100 (Prerequisites for requesting program support), and WAC 480-123-110 (Petitions for eligibility to receive program support).

(c) The ~~((2016))~~ 2018 version of C.F.R. Title 47 is available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

#### WSR 19-14-119

#### PERMANENT RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed July 3, 2019, 8:49 a.m., effective August 3, 2019]

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

Purpose: These amendments increase the amount of time an assessment may be used as evidence of developmental delay, clarifies for internal developmental disabilities administration (DDA) eligibility workers when an eligibility review is required for clients who are nineteen years old, and clarifies the definition of a DDA-paid service.

Citation of Rules Affected by this Order: Amending WAC 388-823-0770, 388-823-1010, and 388-823-1015.

Statutory Authority for Adoption: RCW 71A.12.030.

Adopted under notice filed as WSR 19-11-081 on May 17, 2019.

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 3, Repealed 0.

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

Date Adopted: July 2, 2019.

Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-823-0770 What evidence do I need of developmental delays?** (1) Evidence of substantial functional limitations requires developmental delays of at least 1.5 standard deviations or twenty-five percent or more of the chronological age in one or more of the following developmental areas based on an assessment current within the past ~~((42))~~ eighteen months:

- (a) Physical skills (fine or gross motor);
  - (b) Self help/adaptive skills;
  - (c) Expressive or receptive communication, including American sign language;
  - (d) Social/emotional skills; and
  - (e) Cognitive, academic, or problem solving skills.
- (2) The number of areas in which you are required to have delays to meet the evidence is specific to your age.

(3) Tools used to determine developmental delays must be diagnostic assessments that are designed to measure the developmental areas in subsection (1) of this section and are appropriate to the age of the child being tested.

(4) The assessment must be administered by one of the following professionals qualified to administer the assessment of developmental areas:

- (a) Licensed physician;
- (b) Licensed psychologist or certified school psychologist;
- (c) Speech language pathologist;
- (d) Audiologist;
- (e) Registered occupational therapist;
- (f) Licensed physical therapist;
- (g) Registered nurse;
- (h) Certified teacher;
- (i) Masters level social worker; or
- (j) Orientation and mobility specialist.

**AMENDATORY SECTION** (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

**WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA?** (1) DDA will review your eligibility:

(a) If you are age nineteen and ~~((you have not received an))~~ your most recent eligibility determination ~~((since on or))~~ was completed before your sixteenth birthday;

(b) If you are age nineteen and were determined eligible under another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial functional limitations;

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

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

(e) If new information becomes available that does not support your current eligibility determination; or

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

(2) If DDA requires additional information to make a determination of eligibility during a review and you do not provide sufficient information, DDA will terminate your eligibility:

(a) On your twentieth birthday if the review is because you are age nineteen; or

(b) Ninety days after DDA requests the information if the review is because:

(i) You have requested a paid service;

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

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

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

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

**WAC 388-823-1015 What is the definition of "DDA-paid services" in WAC ((~~388-823-1010(2)~~)) 388-823-1010? "DDA-paid services" means a service or program administered by DDA as evidenced by:**

~~(1) A DDA social services authorization ((of a paid service)) within the last ninety days ((as evidenced by a social services authorization)) in ((the)) a DSHS payment system((:));~~

~~(2) A county authorization ((for day program services));~~

~~(3) A DDA ((individual)) service plan approving a DDA service or program((:));~~

~~(4) Residence in a ((SOLA, RHC, or ICF/ID;)) residential habilitation center; or~~

~~(5) Documentation of DDA approval of your absence from DDA paid services for more than ninety days with available funding for your planned return to services.~~

Statutory Authority for Adoption: RCW 15.86.060(1), [15.86.]065(3).

Adopted under notice filed as WSR 19-10-075 on May 1, 2019.

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

Date Adopted: July 3, 2019.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 19-01-062, filed 12/14/18, effective 1/14/19)

**WAC 16-157-020 Adoption of the National Organic Program.** The Washington state department of agriculture adopts the standards of the National Organic Program, 7 C.F.R. Part 205, effective ((August 7, 2017)) May 30, 2019, for the production and handling of organic crops, livestock, and processed agricultural products. The National Organic Program rules may be obtained from the department by emailing the organic program at [organic@agr.wa.gov](mailto:organic@agr.wa.gov), by phone at 360-902-1805 or accessing the National Organic Program's web site at <https://www.ams.usda.gov/rules-regulations/organic>.

## WSR 19-14-129

### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed July 3, 2019, 11:48 a.m., effective August 3, 2019]

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

Purpose: Chapter 16-157 WAC, Organic food standards and certification, this rule-making order amends chapter 16-157 WAC by adopting the May 30, 2019, version of the United States Department of Agriculture organic regulations (7 C.F.R Part 2015).

Citation of Rules Affected by this Order: Amending WAC 16-157-020.